

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

DAVID DONNIE WILLIAMS,	)	
	)	
PETITIONER,	)	
	)	
v.	)	NO. 2:07-CV-642-WHA
	)	
RALPH HOOKS, WARDEN, <i>et. al.</i> ,	)	
	)	
RESPONDENTS.	)	

**RESPONDENTS'S ANSWER**

Come now the Respondents in the above-styled cause, by and through the Attorney General for the State of Alabama, and, in response to this Honorable Court's order to show cause why a writ of habeas corpus should not be granted, state as follows:

1. David Donnie Williams attacks his November 23, 2004, Bullock County conviction for stalking and his resulting sentence of thirty-eight years' imprisonment. Williams challenges his conviction on following grounds:
  - a. There was insufficient evidence to support his stalking conviction;
  - b. He received ineffective assistance of trial counsel because trial counsel failed to object to the trial court's instruction requiring the jury to continue deliberations; and,

c. He received ineffective assistance of appellate counsel because appellate counsel failed to challenge on direct appeal:

- i. that the trial court's instruction that the jury continue deliberations; and,
- ii. that the trial court was without jurisdiction to adjudicate him guilty of stalking because he was acquitted of the lesser-included offense of harassment.

2. The Respondents acknowledge that Williams is presently incarcerated in St. Clair Correctional Facility pursuant to his lawful conviction of stalking, but deny that Williams is in custody in violation of the laws or Constitution of the United States.

3. The Respondents aver that Williams's petition must be denied and dismissed with prejudice because his claims are procedurally defaulted and/or without merit.

4. Respondents aver that, by asserting the defense of procedural default, they do not waive the future assertion of other applicable defenses such as lack of federal question and lack of merit.

## **PROCEDURAL HISTORY**

### **A. Trial Proceedings and Direct Appeal**

On October 19, 2004, a Bullock County Grand Jury indicted Williams and charged him with one count of stalking in violation of Section 13A-6-90 of the

Code of Alabama (1975). (Exhibit A, pp. 12-13) Mr. Paul Brunson, Jr. represented Williams and filed a plea of not guilty and waiver of arraignment form on November 9, 2004. (Exhibit A, p. 14) On November 22, 2004, Mr. Keith Ausborn filed a notice of appearance on Williams's behalf. (Exhibit A, p. 26) On November 23, 2004, the jury found Williams guilty of one count of stalking. (Exhibit A, p. 550) On December 9, 2004, the trial court sentenced Williams to thirty-eight years' imprisonment. (Exhibit A, p. 563)

On January 10, 2005, Williams filed a motion for reconsideration and reduction of his sentence, a motion for judgment notwithstanding the verdict, and a motion for a new trial. (Exhibit A, pp. 39-47) Judge L. Bernard Smithart denied Williams's post-trial motions on January 18, 2005. (Exhibit A, p. 39-41)

Williams filed a notice of appeal on February 9, 2005. (Exhibit A, p. 2) In his brief on appeal, Williams alleged there was insufficient evidence to support his stalking conviction. (Exhibit B) The Alabama Court of Criminal Appeals issued a memorandum opinion on December 16, 2005, finding the claim precluded from review because Williams "failed to comply with Rule 28(a)(10), Ala. R. App.P. by not including the required citation to appropriate authority in support of his contentions." (Exhibit D, p. 4) The court also found that Williams's claim was without merit because "evidence adduced at trial showed Donnie Williams intentionally and repeatedly followed, harassed, and expressly threatened Callie

Williams with the intent to place her in reasonable fear of death or serious bodily injury....no less than six times.” (Exhibit D, p.6)

The Alabama Court of Criminal Appeals overruled Williams’s application for rehearing was on January 13, 2006. (Exhibit F) A certificate of judgment was issued on February 1, 2006. (Exhibit G)

### **B. Rule 32 Proceedings**

On March 28, 2006, Williams filed a Rule 32 postconviction petition in the Bullock County Circuit Court raising the following claims:

1. The Constitution of the United States or of the State of Alabama requires a new trial because:
  - a. the trial court erroneously instructed the jury to continue deliberations after it informed the trial court that it was deadlocked;
  - b. the trial court should have personally instructed the jury regarding its deliberations in front of Williams and his trial counsel;
  - c. Williams was denied effective assistance of trial counsel because trial counsel failed to object to the trial court’s instruction that the jury continue deliberations; and,
  - d. Williams was denied effective assistance of appellate counsel because:
    - i. the only issue raised on appeal was sufficiency of the evidence and “other issues were appealable”; and,



ii. appellate counsel's brief was "written in a manner to be totally" incomprehensible; and,

2. The trial court was without jurisdiction to render judgment or impose sentence because Williams was acquitted of the lesser included offense.

(Exhibit H, pp. 2-13) The State filed a response to Williams's petition on June 28, 2006. (Exhibit H, pp. 53-56)

On April 25, 2006, Judge L. Bernard Smithart denied Williams's petition in a written order finding that Williams's claims of ineffective assistance of counsel were precluded and without merit. (Exhibit H, p. 59) Judge Smithart also found Williams's petition failed to meet his burden of proof under Rule 32.2 of the Alabama Rules of Criminal Procedure. (Exhibit H, p. 59) Judge Smithart further found that the trial court's response to the jury's note regarding reaching a verdict was proper. (Exhibit H, p. 59)

Williams appealed, raising four issues:

(1) Williams received ineffective assistance of trial counsel because trial counsel did not object to the trial judge sending a written instruction to the jury to continue deliberation;

(2) Williams's trial counsel was ineffective because he did not object to the trial court's lack of jurisdiction to adjudicate him guilty of stalking;

(3) Williams's appellate counsel was ineffective because he failed to raise the aforementioned claims on direct appeal; and,

(4) Williams did not receive proper notice that he was being charged with stalking.

(Exhibit I) On June 28, 2006, the State filed its response brief. (Exhibit J)

On August 18, 2006, the Alabama Court of Criminal Appeals issued a written memorandum opinion affirming the trial court's decision to deny Williams's postconviction relief. (Exhibit L) That court concluded that: (1) two of Williams's claims – he received ineffective assistance of trial counsel because trial counsel failed to object to the purported issue regarding the lack of jurisdiction of the trial court to adjudicate him guilty of stalking and that he did not receive proper notification that he was being charged with stalking – were raised for the first time on appeal, and thus, were not properly presented for appellate review; (2) Williams's claim that trial counsel was ineffective because he failed to object to the trial judge's written instruction to the jury to continue deliberations was moot because the jurors were split on the domestic violence charge of which Williams was acquitted; (3) appellate counsel could not be ineffective for failing to raise a moot issue on direct appeal; and (4) appellate counsel was not ineffective for failing to raise the erroneous argument on appeal that the domestic violence charge against Williams was a lesser included offense of the stalking charge because separate evidence was necessary for each charge. (Exhibit L)

Williams's application for rehearing was overruled on September 1, 2006, by the Alabama Court of Criminal Appeals. (Exhibit N) The Supreme Court of

Alabama denied Williams's petition for writ of certiorari without opinion on October 13, 2006. (Exhibit P)

On February 7, 2007, Williams filed a second petition in the Bullock County Circuit Court. (Exhibit Q, p. 9) Williams presented three issues in the petition:

- (1) Williams's conviction was obtained in violation of the Double Jeopardy Clause;
- (2) The trial court was without jurisdiction to render judgment or impose sentence because Williams was convicted in violation of the Double Jeopardy Clause; and,
- (3) Williams's sentence exceeds the maximum authorized by law.

(Exhibit Q, pp. 6, 13) The State filed a response to Williams's petition on March 7, 2007. (Exhibit Q, p. 24)

On March 15, 2007, Judge Smithart denied Williams's petition in a written order finding Williams's claims were successive, time-barred, and precluded. (Exhibit Q, p. 35) Judge Smithart also held that Williams's double jeopardy claim was without merit and did not accurately reflect the circumstances of his conviction. (Exhibit Q, p. 35) He further held that Williams's failed to meet his burden of proof regarding his claims that the trial court was without jurisdiction and that his sentence was not authorized by law. (Exhibit Q, p. 35)

Williams appealed arguing that the trial court erred by denying his petition because he was acquitted of the lesser included offense of harassment, and therefore, his conviction of stalking was in violation of the Double Jeopardy

Clause. (Exhibit R) He also challenged the sufficiency of the evidence presented for his stalking conviction, contending that the victim's testimony was not sufficient to convict him. (Exhibit R) The State filed its response on July 27, 2007. (Exhibit S) This appeal is currently pending before the Alabama Court of Criminal Appeals.

### **C. Federal Habeas Petition**

Williams filed the present federal habeas petition, his first, on July 2, 2007.<sup>1</sup> (Exhibit T) Respondents now file this answer in response.

### **STATUTE OF LIMITATION**

A one-year limitation period applies to federal habeas petitions under the Antiterrorism and Effective Death Penalty Act (AEDPA). See Title 28 U.S.C. § 2244(d)(1); Ford v. Moore, 296 F. 3d 1035, 1035 (11th Cir. 2002) ("AEDPA sets forth a one-year statute of limitations for a prisoner to apply for federal habeas relief from the judgment of a state court."). Williams had one year from the date his conviction became final in state court with the issuance of a certificate of judgment on February 1, 2006, plus ninety days to appeal to the United States

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<sup>1</sup> This is the date Williams's petition is signed. See Houston v. Lack, 487 U.S. 266, 108 S. Ct. 2379 (1988).

Supreme Court. See Wade v. Battle, 379 F. 3d 1254, 1256 (11th Cir. 2004) (“judgment of conviction became ‘final’... when the ninety-day period in which to seek *certiorari* from the United States Supreme Court expired”). Therefore, Williams’s statute of limitation period began to run on May 3, 2006. On May 3, 2006, however, Williams had already filed a state court post-conviction petition which tolled running the statute of limitation until that post-conviction petition became final in state court on October 13, 2006, with the issuance of a certificate of judgment. (Exhibit I) See Sibley v. Culliver, 377 F. 3d 1196, 1199-1200 (11th Cir. 2004) (Section 2244(d) “provides that this limitation period may be tolled during any time in which ‘a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending’”). Thus, the statute of limitation began to run on October 14, 2006, giving Williams until October 14, 2007, to file the present petition. As he filed the present petition on July 2, 2007, this petition is not barred by the statute of limitation.

## ARGUMENT

### A. Exhaustion

#### 1. Direct Appeal

Before this Court may reach the merits of Williams's claims, he must exhaust the remedies available in state court. See O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999); Henderson v. Campbell, 353 F.3d 880, 897 (11th Cir. 2003). Thus, until a petitioner's claims have been fully and fairly presented to the state courts for consideration, the federal exhaustion requirement has not been satisfied. See Thomas v. Crosby, 371 F.3d 782, 813-14 (11th Cir. 2004). Exhaustion of state remedies occurs when a petitioner properly presents his issues in a "petition for discretionary review in the state's highest court" even if "the state supreme court rarely grants such petitions and usually confines itself to answering questions of broad significance." Smith v. Jones, 256 F.3d 1135, 1138 (11th Cir. 2001). When a petitioner fails to exhaust state remedies that are no longer available, "that failure is a procedural default which will bar federal habeas relief, unless either the cause and prejudice or the fundamental miscarriage of justice exception is established." Id.

In this case, Williams's claim that there was insufficient evidence supporting his stalking conviction is procedurally defaulted. First, this issue was raised on direct appeal and the Alabama Court of Criminal Appeals held it was precluded

because Williams's had failed to comply with Rule 28(a)(10) of the Alabama Rules of Appellate Procedure. See Siebert v. Allen, 455 F.3d 1269, 1271 (11th Cir. 2006) ("Federal courts are barred from reaching the merits of a state prisoner's federal habeas claim where the petitioner has failed to comply with an independent and adequate state procedural rule.").

Second, Williams did not seek the Alabama Supreme Court's discretionary review, and thus, this claim has not has not been exhausted for purposes of federal habeas review. See Boerckel, 526 U.S. at 842; Smith, 256 F. 3d at 1138. Because he failed to seek the Alabama Supreme Court's discretionary review under Rule 39 of the Alabama Rules of Appellate Procedure, and cannot return to state court to relitigate this issue, it is effectively exhausted and procedurally defaulted. See Coleman v. Thompson, 501 U.S. 722, 735, n. 1 (1991) ("if the [p]etitioner failed to exhaust state remedies and the court to which [p]etitioner would be required to present his claims in order to meet the exhaustion requirement could now find the claims procedurally barred[,] ... there is a procedural default for purposes of federal habeas."). As a result, until Williams establishes either cause and prejudice or that a fundamental miscarriage of justice will result if his claim is not considered by this Court, this claim is due no further review or relief. See Jones v. White, 992 F.2d 1548, 1564 (11th Cir. 1993).

Finally, Williams has raised his claim regarding sufficiency in his second Rule 32 postconviction petition. Even if considered properly raised, Williams has failed to properly exhaust the claim because the claim is pending before the state courts. Nevertheless, because this claim is clearly defaulted, there is no need to dismiss it without prejudice.

## **2. Rule 32**

Williams's remaining three claims regarding ineffective assistance of counsel have been presented to the state courts in his timely first Rule 32 postconviction petition and, therefore, for purposes of federal habeas, have been exhausted.

## **B. Merits**

Williams contends that his trial counsel was ineffective because he did not object to the trial court's instruction requiring the jury to continue deliberations. He also claims that appellate counsel was ineffective because he failed to raise on direct appeal that: (1) the trial court's instruction requiring the jury to continue deliberations was improper; and, (2) the trial court did not have jurisdiction to adjudicate him guilty of stalking because he was acquitted of the lesser-included offense of harassment. His three claims of ineffectiveness of counsel were



presented to the state courts in his first timely Rule 32 proceeding. The trial court determined that Williams's claims were without merit and denied his petition.

(Exhibit H) The Alabama Court of Criminal Appeals affirmed the trial court's decision, finding that Williams's claims of ineffectiveness were without merit.

(Exhibit L)

Williams's claims of ineffective assistance of counsel warrant no relief on federal habeas review because he has not shown that the state courts applied the incorrect law or unreasonably applied the law to the facts in his case. Moreover, Williams has not cited any federal law to support his claims.

Furthermore, he is not entitled to any relief because the state courts applied the correct law in resolving the issue of ineffective assistance of counsel. The correct federal law is stated in Strickland v. Washington, 466 U.S. 668, 687 (1984). In Strickland, the Supreme Court set forth a two-pronged standard for reviewing ineffective assistance of counsel claims: (1) that counsel's actions or omissions were deficient; and, (2) that the deficiency resulted in a prejudicial result. Id. See also Johnson v. Alabama, 256 F.3d 1156, 1175-76 (11th Cir. 2001) ("The petitioner bears the burden of proof on the 'performance' prong as well as the 'prejudice' prong of a Strickland claim, and both prongs must be proved to prevail."). Thus, Williams must show that counsel's performance was unreasonable under the circumstances. Strickland, 466 U.S. at 690 ("a court

deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." ). To demonstrate counsel's deficiency, Williams must show that counsel "made errors so serious that counsel was not functioning as the 'counsel' guaranteed" by the Sixth Amendment. Id. at 687. The deficiency component was subject to review "under 'prevailing professional norms'" with the presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. at 690. Thus, Williams must demonstrate that "counsel's errors were no serious as to deprive [him] of a fair trial[,]" thereby creating a "trial whose result [was] unreliable." Id. at 687. He had to prove that "there [was] a reasonable probability that, but for counsel's unprofessional error, the result of the proceeding would have been different[,]" such that it "undermine[d] confidence in the outcome" of the case. Id. at 694. The state courts correctly held that Williams failed to do this.

The Alabama Court of Appeals held that Williams's claim that trial counsel was ineffective because he should have "objected to the trial judge's written instruction to the jury to continue deliberations" was moot. (Exhibit L, p. 3) The court found that "[t]he jury's note to the judge ... indicated that the jurors were split on the domestic violence charge" of which Williams was acquitted. (Exhibit, pp. 3-4) The court concluded that "[o]bviously, Williams was the beneficiary of

the jury's continued deliberations" and therefore not "entitled to relief." (Exhibit L, p. 4)

The court further held that "there could be an error on the part of appellate counsel for not raising this issue on appeal." (Exhibit L, p. 4) The court held that Williams's last claim – that appellate counsel was ineffective for failing to raise the issue of whether the trial court had jurisdiction to adjudicate him guilty of stalking because he was acquitted of the lesser offense of domestic violence – was based on a "faulty premise." (Exhibit L, p. 4) The court found that "separate evidence had to be presented regarding" the stalking charge and the domestic violence charge. (Exhibit L, p. 4) Thus, in Williams's case, "domestic violence cannot be considered a lesser included offense encompassed in the stalking charge" and it would have been "improper for Williams's appellate counsel to make such an erroneous argument" on appeal. (Exhibit L, p. 4)

In so holding, the language used by the court finding Williams's ineffectiveness claims meritless was consistent with the standard established in Strickland. The court correctly concluded that Williams's ineffectiveness of counsel claims did not constitute deficient representation because the underlying substantive claims were without merit.

## **CONCLUSION**

For the above-stated reasons, this Court should dismiss Williams's petition with prejudice.

Respectfully submitted,

Troy King (KIN047)

Attorney General

By:

s/Audrey Jordan

Audrey Jordan

Assistant Attorney General

## **EXHIBIT LIST**

- Exhibit A - Copy of the record on direct appeal (4 volumes). CC-04-144;  
CR-04-0846;
- Exhibit B - Copy of Williams's brief on direct appeal. CC-04-144;  
CR-04-0846;
- Exhibit C - Copy of the State's brief on direct appeal. CC-04-144; CR-04-0846;
- Exhibit D - Copy of the Alabama Court of Criminal Appeals's written  
memorandum opinion on direct appeal. CC-04-144; CR-04-0846;
- Exhibit E - Copy of Williams's application for rehearing. CC-04-144;  
CR-04-0846;
- Exhibit F - Copy of the Alabama Court of Criminal Appeals's order overruling  
Williams's application for rehearing. CC-04-144; CR-04-0846;
- Exhibit G - Copy of the certificate of judgment. CC-04-144; CR-04-0846;
- Exhibit H - Copy of the record of Williams's first Rule 32 proceeding (1 vol.).  
CC-04-144.60; CR-05-1451;
- Exhibit I - Copy of Williams's brief on appeal of his first Rule 32.  
CC-04-144.60; CR-05-1451;
- Exhibit J - Copy of the State's response to Beasley's Rule 32 petition.  
CC-04-144.60; CR-05-1451;

- Exhibit K - Copy of Williams's reply brief. CC-04-144.60; CR-05-1451;
- Exhibit L - Copy of the Alabama Court of Criminal Appeals's memorandum opinion. CC-04-144.60; CR-05-1451;
- Exhibit M - Copy of Williams's application for rehearing. CC-04-144.60; CR-05-1451;
- Exhibit N - Copy of the Court of Criminal Appeals's order overruling Williams's application for rehearing. CC-04-144.60; CR-05-1451;
- Exhibit O - Copy of Williams's petition for writ of certiorari. CC-04-144.60; CR-05-1451; No. 1051744;
- Exhibit P - Copy of the Alabama Supreme Court's order denying Williams's petition for writ of certiorari. CC-04-144.60; CR-05-1451; No. 1051744
- Exhibit Q - A copy of the record in Williams's second Rule 32 proceeding (1 vol.). CC-04-144.61; CR-06-1048;
- Exhibit R - A copy of Williams's brief on appeal. CC-04-144.61; CR-06-1048;
- Exhibit S - A copy of the State's brief on appeal. CC-04-144.61; CR-06-1048.
- Exhibit T - A copy of Williams's petition for habeas corpus.

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of August, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: David Donnie Williams, AIS # 169189, St. Clair Correctional Facility, 1000 Clair Road, Springville, Alabama 35146.

Respectfully submitted,

s/Audrey Jordan  
Audrey Jordan  
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Alabama State House  
11 South Union  
Montgomery, AL 36130-0152  
Telephone: (334) 242-7300  
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E-Mail: AJordan@ago.state.al.us

309636/111065

COURT OF CRIMINAL APPEALS NO. CR 04-0846

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF Bullock COUNTY, ALABAMA

CIRCUIT COURT NO. CC-2004-144

CIRCUIT JUDGE Hon. L. Bernard Smithart

Type of Conviction / Order Appealed From: Stalking

Sentence Imposed: 38 years

Defendant Indigent: ☒ YES ☐ NO

David Donnie Williams

NAME OF APPELLANT

Hon. Donald E. Spencer 334-269-1934

(Appellant's Attorney) (Telephone No.)

547 S. Lawrence Street

(Address)

Montgomery, AL 36104

(City)

(State)

(Zip Code)

V.

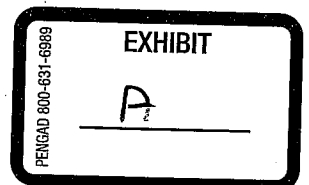
STATE OF ALABAMA

NAME OF APPELLEE

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter  
name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)





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CC-2004-144

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ACR0372 ALABAMA JUDICIAL INFORMATION SYSTEM CASE: CC 2004 000144.00  
 OPER: IRJ CASE ACTION SUMMARY  
 PAGE: 1 CIRCUIT CRIMINAL RUN DATE: 10/29/2004  
 =====  
 1. THE CIRCUIT COURT OF BULLOCK JUDGE: LBS

STATE OF ALABAMA

VS

WILLIAMS DAVID DONNIE  
505 JOHNSON STREET

CASE: CC 2004 000144.00

UNION SPRINGS, AL 36089 0000

DOB: 08/14/1965 SEX: M RACE: B HT: 5 06 WT: 140 HR: BLK EYES: BRO  
 SSN: 014622787 ALIAS NAMES:  
 =====  
 CHARGE01: STALKING CODE01: STAL LIT: STALKING TYP: F #: 001  
 OFFENSE DATE: 04/17/2004 AGENCY/OFFICER: 0090000 MURRY

DATE WAR/CAP ISS:  
 DATE INDICTED: 10/19/2004  
 DATE RELEASED:  
 BOND AMOUNT: \$.00

DATE ARRESTED: 04/21/2004  
 DATE FILED: 10/29/2004  
 DATE HEARING:  
 SURETIES:

DATE 1: 11/09/2004 DESC: ARRG  
 DATE 2: DESC:

TIME: 0830 A  
 TIME: 0000

TRACKING NOS: DC 2004 000209 00 /

DEF/ATY: BRUNSON PAUL W JR  
 P.O. BOX 475

TYPE: R

TYPE:

CLAYTON

AL 36016

00000

PROSECUTOR: WHIGHAM BOYD

OTH CSE: DC200400020900 CHK/TICKET NO:  
 COURT REPORTER: SID NO: 000169189 GRAND JURY: BF0434  
 DL STATUS: PRISON DEMAND: OPER: IRJ

DATE ACTIONS, JUDGEMENTS, AND NOTES

DATE	ACTIONS, JUDGEMENTS, AND NOTES
11/11/04	Order to Transfer
11/9/04	Waiver
11/12/04	ORDER TO TRANSFER
11/15/04	Pled & Waiver filed
11/16/04	Original Strike List filed.
11/16/04	Original Jury list
11/18/04	Notice to State to Present APT(D) Evidence
11/22/04	Notice of Appearance, Motion for Disclosure; Motion to Suppress filed
11/23/04	Notice of Intent to Request Enhancement filed
11/23/04	Jury Verdict filed
11/30/04	Guilty order filed
12/1/04	Order to Transfer filed - Copies to Parties
12/18/04	Def's Petition for Mercy
12/20/04	Settling order filed
12-21-04	Transcript filed - forwarded to SD & DOC

ACR0369 ALABAMA JUDICIAL INFORMATION CENTER

CASE ACTION SUMMARY  
CONTINUATIONCASE: CC 2004 000144.00  
JUDGE ID: LBS

STATE OF ALABAMA

VS

WILLIAMS DAVID DONNIE

DATE

ACTION, JUDGMENTS, CASE NOTES

1/10/05 Motion for "Reconsideration & Reduction"  
 1/10/05 Motion for Judgment notwithstanding...  
 1/10/05 Motion for "Trial De Novo" filed  
 1/10/05 Motion for "Stay" filed  
 1/18/05 (4) Motions Denied - copies to Att. & DA  
 1/18/05 State's Response to Defendant's motions filed  
 2-1-05 Corress. filed - CASU forwarded to def.  
 2/4/05 Carr. (Request for Appeal) filed Arg. Seq.  
 2-9-05 Corress. from Court of Criminal Appeals filed  
 2-9-05 Clerk's Notice of Appeal filed - forwarded to AG, DA, def,  
 Atty. General, Court reporter, Court of Criminal Appeals  
 2-14-05 Corress. from Court of Criminal Appeals filed  
 2-24-05 Amended Notice of Appeal - Motion for free transcript &  
 In forma Pauperis Status - Counsel Motion to withdraw &  
 Counsel motion for appointment of appointed counsel for  
 appellate proceeding, docketing statement & Reporter's Transcript  
 order

State of Alabama  
Unified Judicial System

Form C-64(front) Rev. 11/92

# COMPLAINT and WARRANT

(Felonies, Misdemeanors, or Violations -  
District Court or Municipal Court)

Warrant Number

Case Number

DC-04-209

IN THE District COURT OF Bullock ALABAMA  
(Circuit, District, or Municipal) (Name of Municipality or County)

☒ STATE OF ALABAMA ☐ MUNICIPALITY OF \_\_\_\_\_  
v. David Donnie Williams, Defendant

Before me, the undersigned authority, personally appeared this day the undersigned complainant, who, upon first being duly sworn, states on oath that he/she has probable cause for believing, and does believe, that David Donnie Williams

Defendant, whose name is otherwise unknown to the complainant, did, prior to the commencement of this action, commit the offense of Stalking within the

☒ County of Bullock

☐ City/Town of \_\_\_\_\_ or in the police jurisdiction thereof, in that he/she did:

(State specific facts here. Continue on a separate sheet of paper if needed.) David Donnie Williams did

intentionally and repeatedly follow or harass Callie Williams and made  
threats on her life with the intent to place her in reasonable in violation of

☒ Section 13A-6-90, Code of Alabama 1975 fear of death

☐ Ordinance Number \_\_\_\_\_, which embraces section \_\_\_\_\_, Code of Alabama 1975, previously adopted, effective and in force at the time the offense was committed.

☐ Other \_\_\_\_\_

Sworn to and Subscribed before me this

April day of 2004

Wilbert M. Gernigan  
Judge/Magistrate/Warrant Clerk

Callie M. Williams  
Complainant

1010 N L K Blvd Apt #2  
Address Union Springs AL 36089  
738-3401  
Telephone Number

## WARRANT OF ARREST

TO ANY LAW ENFORCEMENT OFFICER WITHIN THE STATE OF ALABAMA:

☒ Probable cause has been found on Complaint filed in this Court against (name or description of person to be arrested)

David Donnie Williams  
charging: [description of offense(s)] Stalking

in violation of 13A-6-90; OR

☐ An Indictment has been returned by the Grand Jury of this county against (name or description of person to be arrested)

charging: [description of offense(s)] \_\_\_\_\_

in violation of \_\_\_\_\_

☐ YOU ARE THEREFORE ORDERED to arrest the person named or described above and bring that person before a judge or magistrate of this Court to answer the charges against that person and have with you then and there this warrant with your return thereon. If a judge or magistrate of this Court is unavailable, or if the arrest is made in another county, you shall take the accused person before the nearest or most accessible judge or magistrate in the county of arrest.

☐ You may release the accused person without taking the accused person before a judge or magistrate:

☒ If the accused person enters into a bond in the amount of \$ 5000.00 with two good sureties approved by an authorized officer or by depositing cash or negotiable bonds in the amount with the court clerk.

☒ If the accused person posts an appearance bond in the amount of \$ 5000.00.

☐ On his or her personal recognizance.

April 19, 2004  
Date

Wilbert M. Gernigan  
Judge/Magistrate/Clerk



Form C-64(back) Rev. 11/92

# COMPLAINT and WARRANT

(Felonies, Misdemeanors, or Violations - District Court)

## CERTIFICATE OF EXECUTION

I, the undersigned law enforcement officer, certify that I executed the foregoing ARREST WARRANT by arresting the accused person named (or described) therein at 8:30 o'clock ☒ a.m. ☐ p.m., on the 21 day of April, 2007 in BullOCK COUNTY, ALABAMA.

After arrest, the accused person was:

☐ Released as authorized at \_\_\_\_\_ o'clock ☐ a.m. ☐ p.m.,  
☐ Taken before (☐ Judge) (☐ Magistrate) at \_\_\_\_\_ o'clock ☐ a.m. ☐ p.m.,

Date 2-21-04

Signature/Title/Agency Lou Murray

## IDENTIFICATION OF ACCUSED PERSON

Name of Accused Person <u>David Donnie Williams</u>						Telephone Number <u>NA</u>	
Social Security Number <u>014-62-2787</u>		Date of Birth <u>8-14-65</u>		Age <u>38</u>	Race <u>B</u>	Sex <u>M</u>	Height <u>5-7</u>
Weight <u>185</u>	Hair <u>BR</u>	Eyes <u>BR</u>	Other				
Address <u>305 Johnson St</u>			City <u>Union Springs</u>			State <u>AL</u>	Zip Code <u>36089</u>
Name of Employer <u>NA</u>						Employer's Telephone Number	
Address			City			State	Zip Code

## WITNESSES

Name	Address	Telephone Number

## ACKNOWLEDGEMENT BY ACCUSED PERSON

☐ I hereby acknowledge that at the time of my release from custody I was directed to appear in person before the court, as follows:

Place: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_ o'clock ☐ a.m. ☐ p.m., and as thereafter needed until discharge.

☐ I promise to appear as directed before the court, as follows:

Place: \_\_\_\_\_

Date: \_\_\_\_\_

Time: \_\_\_\_\_ o'clock ☐ a.m. ☐ p.m., and as thereafter needed until discharged.

Date \_\_\_\_\_

Signature of Accused Person \_\_\_\_\_

Form C-64(a) (front) Rev. 6/91

IN THE District COURT OF Bullock COUNTY

☒ STATE OF ALABAMA: ☐ MUNICIPALITY OF \_\_\_\_\_  
v. David, Bonnie Williams Defendant

INSTRUCTIONS: COMPLETE THE FOLLOWING INFORMATION ON THE ACCUSED

Name of Accused (or Alias)				Telephone Number				
Social Security Number		Driver's License Number		Date of Birth		Age	Race	Sex
Height	Weight	Hair	Eyes	Complexion				
Address of Accused (or Alias)				City		State	Zip Code	
Name of Employer				Employer's Telephone Number				
Address of Employer				City		State	Zip Code	

INSTRUCTIONS: COMPLETE THE FOLLOWING INFORMATION ON THE OFFENSE

Offense: Stalking  
Date and Time of Offense: 4-17-04 approx. 11:45 AM  
Place of Occurrence: Union Springs, AL  
Person Attacked or Property Damaged: \_\_\_\_\_  
How Attacked: \_\_\_\_\_

Did Accused Possess or Use a Weapon? ☐ Yes ☒ No Type: \_\_\_\_\_

Damage Done or Injuries Received: \_\_\_\_\_

Value of Property: \_\_\_\_\_

Details of Offense: Callie Williams advised David D. Williams keep following her and threatening to kill her

Any Law Enforcement Agency Contacted? ☒ Yes ☐ No  
If yes, which one? Union

I make this statement for the purpose of securing a WARRANT/SUMMONS against the named accused. I understand that I am instituting a criminal proceeding and cannot dismiss this case. I further understand that if any of the foregoing facts are untrue, I may, in addition to any other punishment provided by law, be taxed with court costs in this proceeding.

Sworn to and Subscribed before me this  
19th day of  
April, 2004

Wilbert M. Gernigan  
Judge/Clerk/Magistrate

Callie M. Williams  
Complainant  
416-98-3998  
Social Security Number

1010 MLK BLVD Lot #2  
Address Union Springs, AL 36089

## WITNESS STATEMENT

Statement of: Callie M. WilliamsRace: Black Sex: F DOB: 2/14/64 Age: 40SSN: 416-98-3998 Education: 12thAddress: 1010 M.L.K. BLVD Lot #2Place of Employment: Wayne FarmsTelephone Number: (Home) 738-3401 or (Work) 739-2930Place of Statement: 430-6321Date: April 17, 2004 Time Started: about 11:40 a.m.

Statement Given To: \_\_\_\_\_

This statement is of my own free will without threats, promises, or duress having been made toward me.

I was coming out of the Grocery store (AG) at the, he was parked beside the car that I was driving. I didn't say anything to him at time, he told me as I was getting into the car, I don't like what you did to me at Wayne Farm. And I told him to leave me alone. So I told him to stay away from my house at night because he don't belongs there day

Continued on Supplement ( ) Y ( ) N

Time Ended: \_\_\_\_\_

UNION SPRINGS  
POLICE DEPARTMENT

12. OR TITLE

PAGE OF

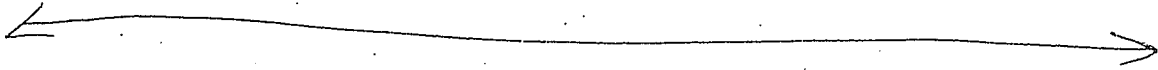
CASE NUMBER

or night. And I also told him too bring me back those earrings, back that he stole out of my bedroom, because I suppose too be ~~back~~ sending those earrings back where they came from, and he told me he don't have no dam earrings of mine. So at the time my son said why don't you leave my mother alone, and he told my son too shut up before I fuck you up. And ~~that~~ <sup>at</sup> the time the guy that was in the car with him was looking very funny because he didn't know what's ~~is~~ going on. So at time David Williams told me I am going too kill you and I will have you begging for ~~the~~ life, because you know that I am not nothing too play with. He also said that he will see me Heaven or Hell, what he mean by that he is going too kill me and turn around and kill himself. So at time he pulled off and left AG Grocery Store, and back up at ~~left~~ the the ~~AG~~ Grocery Store. And that's the time I look in the rear view mirror and saw him following me, and that's the I called the Police Station for them too send a unit down too ~~AG~~ Grocery Store, ~~because~~ because I am being

SIGNATURE



Harassed by [unclear] Store. In less than 2 minutes the police was there, 8  
when he saw the Police car turning around that's  
the time when he took off driving real fast  
with that guy in the ~~the~~ car with him.



Callie M. Williams

## WITNESS STATEMENT

Statement of: Anthony Blakely  
 Race: B Sex: M DOB: 8-21-62 Age: 41  
 SOC: 418-98-7802 Education: 12<sup>th</sup>  
 Address: 1749 Highlog Road Fitzpatrick, ALA 36029  
 Place of Employment: Construction Worker  
 Telephone No.: Home 584-7532 Work \_\_\_\_\_  
 Place of Statement: \_\_\_\_\_

Date: \_\_\_\_\_ Time Started: 12:58 p.m.  
 Statement Given To: Officer Sharon Dean

This statement is of my own free will without threats, promises, or duress having been made toward me.

I asked Donnie to drop me off in the bottom, the next thing I know he started talking to this woman. I don't know what's going on, the next thing I know we were in a car chase from the police. I ask him several times to let me out of the car. We liked to hit a telegram post and we liked to hit a big truck. We ending up on County Road 61. A. B.

Nothing Follows

Anthony Blakely

Continued on Supplement ( ) Y ( ☒ ) N

Time Ended: 1:06 p.m.

**TYPE OR PRINT IN BLACK INK**

INCHES

1

2

5

4

1

9

OFFICER'S WORK PRODUCT MAY NOT BE PUBLIC INFORMATION

[illegible]

NO.:

04-144

G. J. No. BF-04-034

A TRUE BILL, presented to the judge Presiding in open Court by the Foreperson of this Grand Jury, and filed in open court this 19 day of Oct, 04.

Leon Battle  
Grand Jury Foreman

W M J  
Clerk of the Circuit Court  
of Bullock County  
Third Judicial Circuit

10/19/04  
Date

## INDICTMENT

THE STATE OF ALABAMA

vs.

DAVID DONNIE WILLIAMS

Address: 505 JOHNSON STREET, UNION SPRINGS, AL 36089  
alias

None Reported

## CHARGES:

STALKING(13A-6-90)

CLASS

C

TYPE

F

## WITNESSES:

LT. JAMES FINNEY, UNION SPRINGS POLICE DEPARTMENT, UNION SPRINGS, AL 36089

CALLIE WILLIAMS, 1010 MLK BLVD, LOT #2, UNION SPRINGS, AL 36089

OFFICER NATHAN WILLIAMS, UNION SPRINGS POLICE DEPT, UNION SPRINGS, AL 36089

QUADARIOUS WILLIAMS, 1010 MLK BLVD, LOT #2, UNION SPRINGS, AL 36089

Previous Bond \$ \_\_\_\_\_ Bail fixed at \$ no Bond this 19th day of October, 2004

Bf S H  
Judge Presiding

THE STATE OF ALABAMA  
Bullock COUNTY

CIRCUIT COURT

2004

BOYD WHIGHAM  
DISTRICT ATTORNEY  
THIRD JUDICIAL CIRCUIT

## THE STATE OF ALABAMA, Bullock COUNTY

Circuit Court - Third Judicial Circuit

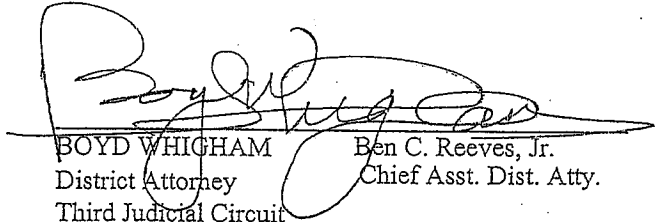
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COUNT 1

The Grand Jury of said county charge that, before the finding of this indictment, DAVID DONNIE WILLIAMS, whose name is otherwise unknown to the Grand Jury, did on or about between March 24, 2004 and April 17, 2004, intentionally and repeatedly follow or harass CALLIE WILLIAMS and did make a credible threat with the intent to place CALLIE WILLIAMS in reasonable fear of death or serious bodily harm, in violation of Section 13A-6-90 of the Code of Alabama,

against the peace and dignity of the State of Alabama.



BOYD WHIGHAM  
District Attorney  
Third Judicial Circuit

Ben C. Reeves, Jr.  
Chief Asst. Dist. Atty.



Clerk

State of Alabama  
Unified Judicial SystemPLEA OF NOT GUILTY AND WAIVER OF  
ARRAIGNMENT

Case Number

Form CR-9 Rev. 3/95

CL-264-144-148-12

IN THE CIRCUIT COURT OF BULLOCK, ALABAMA  
(Circuit, District, or Municipal) (Name of County or Municipality)☒ STATE OF ALABAMA v. DAVID D. WILLIAMS, Defendant

Comes now, the defendant in the above-styled matter, and to the offense charged enters a plea of

- ☒ Not Guilty  
☐ Not Guilty by Reason of Mental Disease or Defect  
☐ Not Guilty and Not Guilty by Reason of Mental Disease or Defect

Defendant acknowledges receipt of the copy of the charge against him/her and further waives the right to have an arraignment at which the defendant is present in person, or at which the defendant is represented by an attorney.

But, the defendant specifically and expressly reserves the right upon the filing hereof to hereafter, but before trial or before such date as may be set by the court, to interpose any defenses, objections, or motions which the defendant had the right as a matter of law or rule to interpose in this cause, prior to the filing hereof.

Defendant's date of birth is 8-19-65Defendant's age is 39

The defendant is not eligible for consideration by the court for youthful offender status as provided by law.

Date 11-15-04  
11/15/04

Date

Date

Date

Defendant

Attorney for Defendant

This is to certify that I am the attorney for the defendant in this matter, and that I have fully explained this form and all matters set forth herein, and pertaining hereto, to the defendant. I further state to the court that I have explained to the defendant his right to be arraigned in person and his right to have me represent him at arraignment. I further certify to the court that my client hereby knowingly, voluntarily, and intelligently waives these rights after a full and complete explanation of each and every one of them to him/her by me. BOTH MYSELF AND THE DEFENDANT UNDERSTAND THAT I AM RESPONSIBLE FOR ASCERTAINING WHAT DATE, IF ANY, HAS BEEN SET BY THE COURT FOR THE MAKING OR FILING OF ANY DEFENSES, OBJECTIONS, OR MOTIONS. I FURTHER UNDERSTAND THAT I AM RESPONSIBLE FOR NOTIFYING MY CLIENT OF THE DATE HIS/HER CASE IS SET FOR TRIAL, AND THAT I HAVE ADVISED AND INFORMED HIM/HER THAT IN THE EVENT HE/SHE FAILS TO APPEAR ON THE DATE HIS/HER CASE IS SET FOR TRIAL, ALL APPROPRIATE LEGAL ACTION WILL BE TAKEN BY THE COURT AGAINST THE DEFENDANT AND HIS/HER BOND. I further certify to the court that I have advised my client that he/she is responsible for obtaining the date his/her case is set for trial in this matter and that in the event he/she fails to appear on the date his/her case is set for trial all appropriate legal action will be taken by the court against the defendant and his/her bond, and I hereby certify that the defendant knows that he/she is personally responsible for obtaining the date his/her case is set for trial and for being present in court on that date.

Date

Attorney for Defendant Signature

I certify that I served a copy of the foregoing plea and waiver of arraignment on the Prosecutor by mailing/delivering a copy of the same to him/her on:

Date

Printed or Typed Attorney's Name

Address

This is to certify that my attorney has explained each and every matter and right set forth in this form and I have completely and fully read and do so understand each and every matter set forth in this form. I further state to the court that I do not wish to be personally present at an arraignment in this case and that I do not want to have an attorney represent me at an arraignment and WITH FULL KNOWLEDGE OF EACH OF THESE RIGHTS, I HEREBY EXPRESSLY WAIVE SUCH RIGHTS. I further state to the court that I have been informed of the charge against me and have received a copy of the charge.

Date 11-15-04  
NOV. 15, 2004

Defendant Signature

Filed in office this date

By

Clerk



BULLOCK COUNTY CRIMINAL COURT	FALL TERM	VENUE	DATE
1 Adams, Thomas W. Jr. <u>D</u>	WM	P. O. Box 100, Midway	16
2 ers, Ruby Persons <u>D</u>	BF	507 County Road 174	
3 Barnett, Alvin Vernon	WM	765 Rounty Road 88	
4 Betts, William Ronald <u>S</u>	WM	5752 Hwy 82, Fitzpatrick	
5 Borders, Ethel Baker	BF	P. O. Box 468, Union Springs	
6 Calhoun, Altha Germany	BF	339 County Road 166, Union Springs	
7 Calhoun, Barbara Elder	BF	5512 Old Union Road, Fitzpatrick	
8 Calloway, Greta <u>S</u>	BF	107 Pecan Lane, Union Springs	
9 Churchwell, Beverly Rotton <u>AD</u>	WF	6190 Co Road 14, Union Springs	
0 Culpepper, William Scott <u>S</u>	WM	14019 Hwy 29, Union Springs	
1 Dillard, Lucille	BF	212 Boxwood Lane, Hurtsboro	
2 Douglas, Barbara Torbert J.	BF	P. O. Box 5233, Union Springs	
3 Ellis, Essie Lee <u>D</u>	BF	721 Grove Circle, Union Springs	
4 Ellis, Susie Jackson <u>D</u>	BF	781 Washington Street, Union Springs	
5 Ellis, Willie Ann <u>S</u>	BF	721 Grove Circle, Union Springs	
6 Goshea, Willie Clyde <u>S</u>	BM	264 State Hwy 239, Union Springs	
7 Green, John Robert <u>S</u>	WM	11107 Highway 29, Union Springs	
8 Gregg, Joel Kevin <u>D</u>	WM	184 Gholston St., Fitzpatrick	
9 Harris, Walter James <u>S</u>	BM	269 Ponderosa Loop Rd., Union Springs	
0 Holmes, Iida Burgess	BF	P. O. Box 522, Union Springs	
1 Hubbard, Eunice Bassett	WF	5169 County Road 15, Union Springs	
2 Jackson, Michael Ed <u>S</u>	BM	708 Pittman Drive, Union Springs	
3 King, Barbara Smith Ann	BF	4842 County Road 47, Midway	23



24	Lane, Barbara Avery L. <i>D</i>	BF	792 Hardaway Church Road, Union Springs
	<del>Moore, Ann Reynolds</del>	WF	P. O. Box 3, Fitzpatrick
	<del>Moore, John Murray</del>	WM	18705 Hwy 29, Union Springs
26	Nobles, Larry Terrel <i>S</i>	BM	P. O. Box 204, Union Springs
27	<del>O'Brien, Vatarie Renee</del>	BF	33 County Road 59, Union Springs
	<del>Palmer, Celecia W.</del>	BF	P. O. Box 823, Union Springs
28	<del>Parham, Melinda Ann</del>	BF	272 Main Street, Midway
29	Parker, Marvin Jerome, Jr. <i>S</i>	BM	P. O. Box 41, Union Springs
30	Pickett, Joyce Moseley <i>S</i>	WF	325 Pickett Road, Fitzpatrick
	<del>Pierce, Leta Denise</del>	WF	15333 Hwy 82, Union Springs
31	Robbins, Yvette Shikiki <i>D</i>	BF	P. O. Box 191, Midway
32	Rogers, Marcus Johnson James <i>S</i>	BM	P. O. Box 172, Midway
	<del>Rutland, Joseph Raoul</del>	WM	13663 Hwy 110, Fitzpatrick
33	Simmons, Darren Lamar <i>D</i>	BM	706 Lamar Drive, Union Springs
	Simmons, Roberta T. <i>D</i>	BF	599 Co. Rd. 64, Union Springs
	<del>Simmons, Zachery Tyrone</del>	BM	P. O. Box 903, Union Springs
35	Smith, Daniel Lee <i>S</i>	BM	P. O. Box 187, Union Springs
36	Smith, Thelma Ann <i>D</i>	BF	P. O. Box 5204, Union Springs
37	Taylor, Margaret Marie <i>D</i>	BF	Apt. 119, Bloomfield Ct., Union Springs
	<del>Walker, Traci Dionne</del>	BF	2889 Highway 51 South, Midway
38	Williams, Harley B. <i>D</i>	BM	108 Holcombe Ave., Union Springs
	<del>Williams, Rose Merry</del>	BF	P. O. Box 823, Union Springs

11-22-04

CC 2004-144

CC 2004-145

State of Alabama vs David Donnie Williams

1. 35

2. 22

3. 16

4. 32

5. 15

6. 17

7. 19

8. 30

9. 26

10. 29

11. 10

12. 4

13. 8

1. 1

2. 13

3. 14

4. 24

5. 34

6. 37

7. 36

8. 38

9. 33

10. 31

11. ~~33~~ 2

12. 18

13. A

JUR210  
OPER: CEC

ALABAMA JUDICIAL INFORMATION SYSTEM  
BULLOCK COUNTY  
STRIKE LIST BY: N A M E

PAGE: 19  
RUN DATE: 11/16/2004  
RUN TIME: 11:52:17

TERM DATE: 11/16/2004 PANEL: 002 STATUS: A

LIKE JUROR#	JUROR'S NAME/COMMENTS	BIRTH DATE	SEX	RAC	PNL	STATUS	#DFR
0008	001225 BARNETT ALLISON VERNON	09/17/1926	M	W	02	ACTIVE	00
0012	003266 BORDERS ETHEL BAKER	02/10/1930	F	B	02	ACTIVE	00
0019	001223 CALHOUN ALMA GERMANY	04/16/1949	F	B	02	ACTIVE	00
0020	002036 CALHOUN BARBARA ELDER	06/21/1953	F	B	02	ACTIVE	00
0023	004899 CHURCHWELL BEVERLY ROTTON	08/19/1975	F	W	02	ACTIVE	00
0035	004071 DILL LUCILLE	08/07/1965	F	B	02	ACTIVE	00
0038	002041 DOUGLAS BARBARA TORBERT J	01/08/1941	F	B	02	ACTIVE	00
0057	002456 HOLMES IDA BURGESS	03/07/1954	F	B	02	ACTIVE	00
0058	004529 HUBBARD JULIA BASSETT	08/31/1952	F	W	02	ACTIVE	00
0065	002043 KING BARBARA SMITH ANN	03/24/1963	F	B	02	ACTIVE	00
0080	000816 MOON ANN REYNOLDS	04/01/1936	F	W	02	ACTIVE	00
0086	001222 OLIVER VALARIE RENE	01/29/1969	F	B	02	ACTIVE	00
0090	002863 PARHAM MELINDA ANN	03/12/1962	F	B	02	ACTIVE	00

\*\*\* PROGRAM TOTALS \*\*\*

RECORDS WRITTEN: 13

CC - 2004 - 144 & 145 David Donnie Williams

November 22, 2004 @ 8:30 A.M.

## IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

FILED IN OFFICE

NOV 18 2004

CLERK-REGISTER, BULLOCK CO., ALA.

STATE OF ALABAMA, )

Plaintiff, )

Vs. )

DAVID DONNIE WILLIAMS, )

Defendant. )

CASE NO: CC2004-144 &amp; 145

NOTICE TO THE DEFENDANT OF THE STATE'S INTENT TO PRESENT 404(b)  
EVIDENCE AT TRIAL

Comes now the State of Alabama, by and through its Assistant District Attorney, Carmella Penn, and gives notice under Rule 404(b) Alabama Rules of Evidence of the prosecutor's intent to present evidence at trial of other crimes, wrongs or acts by the Defendant, David Donnie Williams, for the purpose of showing Motive, Opportunity, Intent, Preparation, Plan, Knowledge (consciousness of guilt), Identity, and Pattern, Scheme or Design.

The State would show as to the general nature of the evidence that the Defendant has the following prior convictions:

1. Bullock County, CC1992-02, Escape 3<sup>rd</sup> Degree, 07/09/92
2. Bullock County, CC1995-42 - Distribution of Controlled Substance, 06/19/95
3. Bullock County, CC1999-215 - Burglary 3<sup>rd</sup> Degree, 12/08/99
4. Bullock County, CC2001-100 - Theft of Property 2<sup>nd</sup> Degree, 11/01/01
5. Bullock County, CC2001-104 - Escape 2<sup>nd</sup> Degree, 11/01/01

The State requests a pretrial ruling on the issue of application of Rule 404(b) to the prior convictions.




Respectfully submitted this 18<sup>th</sup> day of November, 2004.



Carmella Penn, Assistant District Attorney  
Third Judicial Circuit  
P O Box 61, Eufaula, AL 36072-0061

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 18<sup>th</sup> day of November 2004, served a copy of the above and foregoing Notice on Honorable Keith Ausborn, Attorney for the Defendant, by U.S. Mail, postage prepaid and properly addressed to 1224 Ryan Street, Montgomery, AL 36107, facsimile #334-264-9339.



Carmella Penn

## IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

STATE OF ALABAMA

VS.

DAVID DONNIE WILLIAMS

\*

\*

\*

\*

\*

\*

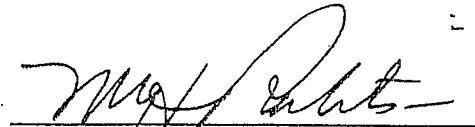
CASE NO. CC-95-42

SENTENCING ORDER

On this day appeared the defendant with his attorney and, with the consent and approval of his attorney, withdrew his plea of not guilty and entered a plea of guilty to Unlawful Distribution of Controlled Substance. Before accepting defendant's plea of guilty, the Court advised the defendant of all of his constitutional rights with the colloquy being taken down by the court reporter. The Court then permitted the defendant to withdraw his plea of not guilty and enter a plea of guilty to Unlawful Distribution of Controlled Substance. The Court inquired of defendant if he had anything to say why judgment and sentence should not now be pronounced upon him and defendant said nothing. It is therefore ORDERED and ADJUDGED by the Court that the defendant is guilty of Unlawful Distribution of Controlled Substance and as punishment defendant is hereby formally sentenced to the penitentiary of the State of Alabama for a term of 5 years. Sentence to be split with 2 years to serve and 3 years on probation. Defendant is ordered to complete the drug rehabilitation program provided by the State of Alabama, Department of Corrections.

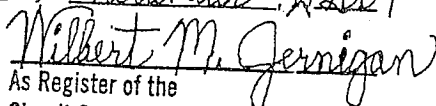
Defendant is ordered to pay court costs, attorney fees and \$50.00 Crime Victim Compensation Fund.

DONE this the 19th day of June, 1995.

  
WILLIAM H. ROBERTSON  
Circuit Judge

.. Wilbert M. Jernigan, do hereby certify that the foregoing is a true and correct copy of a document, as the same appears of record and on file in this office.

Witness my hand and the Seal this the  
17th day of November, 2004

  
As Register of the  
Circuit Court of  
Bullock County, Alabama



## IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

STATE OF ALABAMA,

Plaintiff,

vs.

DAVID DONNIE WILLIAMS,

Defendant.

CASE NO. CC-2001-100

SENTENCING ORDER

On this day appeared the Defendant with his attorney and, with the consent and approval of his attorney, withdrew his plea of not guilty and entered a plea of guilty to the charge of Theft of Property, Second Degree, as charged in the Indictment. Before accepting Defendant's plea of guilty, the Court advised the Defendant of all of his constitutional rights with the colloquy being taken down by the court reporter. The Court accepted Defendant's plea of guilty and adjudged the Defendant to be guilty of the crime of Theft of Property, Second Degree. The Court inquired of Defendant if he had anything to say why judgment and sentence should not now be pronounced upon him and Defendant said nothing.

IT IS, THEREFORE, the sentence of the law and the judgment of this Court that the Defendant be, and hereby is, sentenced to the penitentiary of the State of Alabama for a period of fifteen (15) years. The Defendant is further **ORDERED** to pay a fine in the amount of \$500.00, court costs, \$50.00 for the Crime Victim's Compensation Fund, and attorney's fees.

Defendant's sentence in this case shall run concurrent with his sentence in Case No. CC-1999-215 in which probation was revoked and with his sentence in Case No. CC-2001-104.

DONE and ORDERED this 1st day of November, 2001.

I, Wilbert M. Jernigan, do hereby certify that the foregoing is a true and correct copy of a document, as the same appears of record and on file in this office.

Witness my hand and the Seal this the 17th day of November, 2004

Wilbert M. Jernigan  
As Register of the  
Circuit Court of  
Bullock County, Alabama

Bt Stet  
Burt Smithart, Presiding Circuit Judge  
Third Judicial Circuit of Alabama

## IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

STATE OF ALABAMA,

Plaintiff,

vs.

DAVID DONNIE WILLIAMS,

Defendant.

CASE NO. CC-2001-104

SENTENCING ORDER

On this day appeared the Defendant with his attorney and, with the consent and approval of his attorney, withdrew his plea of not guilty and entered a plea of guilty to the charge of Escape, Second Degree, as charged in the Indictment. Before accepting Defendant's plea of guilty, the Court advised the Defendant of all of his constitutional rights with the colloquy being taken down by the court reporter. The Court accepted Defendant's plea of guilty and adjudged the Defendant to be guilty of the crime of Escape, Second Degree. The Court inquired of Defendant if he had anything to say why judgment and sentence should not now be pronounced upon him and Defendant said nothing.

IT IS, THEREFORE, the sentence of the law and the judgment of this Court that the Defendant be, and hereby is, sentenced to the penitentiary of the State of Alabama for a period of fifteen (15) years. The Defendant is further **ORDERED** to pay court costs, \$50.00 for the Crime Victim's Compensation Fund, and attorney's fees.

Defendant's sentence in this case shall run concurrent with his sentence in Case No. CC-1999-215 in which probation was revoked and with his sentence in Case No. CC-2001-100.

~~1~~ **DONE and ORDERED** this 1st day of November, 2001.

i, Wilbert M. Jernigan, do hereby certify that the foregoing is a true and correct copy of a document, as the same appears of record and on file in this office.

Witness my hand and the Seal this the  
17th day of November, 2004

*Wilbert M. Jernigan*  
As Register of the  
Circuit Court of  
Bullock County, Alabama

*Bt Smith*  
Burt Smithart, Presiding Circuit Judge  
Third Judicial Circuit of Alabama

## IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

STATE OF ALABAMA,  
Plaintiff,

vs.

DAVID DONNIE WILLIAMS,  
Defendant.

CASE NO. CC-1999-215

SENTENCING ORDER

On this day appeared the defendant with his attorney and, with the consent and agreement of his attorney, withdrew his plea of not guilty and entered a plea of guilty to Burglary, 3<sup>rd</sup> Degree. Before accepting defendant's plea of guilty, the Court advised the defendant of all of his constitutional rights with the colloquy being taken down by the court reporter. The Court accepted defendant's plea of guilty and adjudged the defendant to be guilty of the crime of Burglary, 3<sup>rd</sup> Degree. The Court inquired of the defendant if he had anything to say why judgment and sentence should not now be pronounced upon him and the defendant said nothing.

IT IS, THEREFORE, the sentence of the law and the judgment of the Court that the defendant be, and hereby is, sentenced to the penitentiary of the State of Alabama for a period of fifteen (15) years, said sentence being split with three (3) years to serve and five (5) years on probation. The defendant is further ORDERED to complete the Substance Abuse Program provided by the Department of Corrections. Upon successfully completing the Substance Abuse Program, the defendant will be returned to the Court for probation consideration. The defendant is further ORDERED to pay court costs, \$50.00 for the Crime Victim's Compensation Fund, and attorney's fees.

The defendant having made application for probation, imposition of sentence is hereby suspended pending a probation hearing set by this Court for December 13, 1999.

Witness my hand and the Seal this the  
17<sup>th</sup> day of November, 2004  
DONE this 8th day of December, 1999.  
or file in this office.

Witness my hand and the Seal this the  
17<sup>th</sup> day of November, 2004

*Wilbert M. Jernigan*  
As Register of the  
Circuit Court of  
Bullock County, Alabama

*Burt Smithart*  
Burt Smithart, Presiding Circuit Judge  
Third Judicial Circuit of Alabama

IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

STATE OF ALABAMA

VS.

DAVID DONNIE WILLIAMS

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CASE NO. CC-92-02

SENTENCING ORDER

On this day appeared the defendant with his attorney and, with the consent and approval of his attorney, withdrew his plea of not guilty and entered a plea of guilty to Escape, 3rd Degree. Before accepting defendant's plea of guilty, the Court advised the defendant of all of his constitutional rights with the colloquy being taken down by the court reporter. The Court then permitted the defendant to withdraw his plea of not guilty and enter a plea of guilty to Escape, 3rd Degree. The Court inquired of defendant if he had anything to say why judgment and sentence should not now be pronounced upon him and defendant said nothing. It is therefore ORDERED and ADJUDGED by the Court that the defendant is guilty of Escape, 3rd Degree and as punishment defendant is hereby formally sentenced to the penitentiary of the State of Alabama for a term of 3 years on which he is hereby given credit for any time spent incarcerated pending trial.

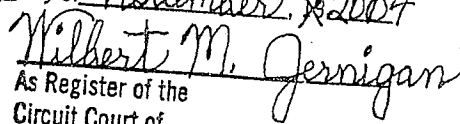
Defendant ordered to pay court costs, attorney fees, \$250.00 fine and \$50.00 for Crime Victim Compensation Fund. Defendant makes application for probation.

DONE this the 9th day of July, 1992.

  
WILLIAM H. ROBERTSON  
Circuit Judge

I, Wilbert M. Jernigan, do hereby certify that the foregoing is a true and correct copy of a document, as the same appears of record and on file in this office.

Witness my hand and the Seal this the  
18th day of November, 2004

  
As Register of the  
Circuit Court of  
Bullock County, Alabama

IN THE CIRCUIT COURT FOR  
BULLOCK COUNTY, ALABAMA  
CRIMINAL DIVISION

STATE OF ALABAMA,

PLAINTIFF,

VS.

DAVID DONNIE WILLIAMS,

DEFENDANT.

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\* CASE NO.: CC-2004-144-145-L.B.S.

NOTICE OF APPEARANCE OF DEFENDANT'S COUNSEL

COMES NOW KEITH AUSBORN, Attorney at Law, serving Notice upon this HONORABLE COURT that he has agreed to Represent the above named Defendant, DAVID DONNIE WILLIAMS, for the Limited Purpose of "CIRCUIT COURT - TRIAL LEVEL PROCEEDINGS", and respectfully request that this HONORABLE COURT ensure that the Record reflects the same.

RESPECTFULLY SUBMITTED this 22 day of NOV, 2004.

\_\_\_\_\_  
ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

ATTORNEY KEITH AUSBORN - "LITIGATOR"  
D/B/A "LAW OFFICE OF ATTORNEY KEITH AUSBORN"  
1224 RYAN STREET  
MONTGOMERY, ALABAMA 36107  
(334) 264-9333 (OFFICE) & (334) 264-9339 FACSIMILE  
E-MAIL ADDRESS: KAILAWYER@KNOLOGY.NET

CERTIFICATE OF SERVICE

I, ATTORNEY KEITH AUSBORN, hereby certify that I have SERVED a copy of the foregoing upon the HONORABLE S. BOYD WHIGHAM & MR. DAVID DONNIE WILLIAMS, on this the 22 day of NOV, 2004, via "HAND DELIVERY & HAND DELIVERY".

\_\_\_\_\_  
ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

IN THE CIRCUIT COURT FOR  
BULLOCK COUNTY, ALABAMA  
CRIMINAL DIVISION

STATE OF ALABAMA,

PLAINTIFF,

VS.

DAVID DONNIE WILLIAMS,

DEFENDANT.

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\* CASE NO.: CC-2004-144-145-L.B.S.

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DEFENDANT'S MOTION FOR DISCLOSURE AND PRODUCTION

COMES NOW the Defendant, by way of Counsel, moves that the State be required to disclose and produce the followings matters, if the same are in its possession or under its control.

- 1) All "EXPERIMENTS, TESTS, EXAMINATIONS, and ETC." regarding the Instant Offenses.
- 2) All "SEARCH WARRANT(S)/CONSENT(S)/INVENTORY FORM(S)" signed by, or attributed to the Defendant.
- 3) All "CRIMINAL HISTORY(S)" of the Defendant & Witnesses.
- 4) All matters required to be disclosed by BRADY VS. MARYLAND.
- 5) All Constitutionally entitled "EXCULPATORY MATERIAL".
- 6) All "THIRD (3RD) PARTY WITNESS' STATEMENT(S)".
- 7) All "MIRANDA RIGHTS FORM" signed by, or attributed to the Defendant.
- 8) All "TRANSCRIPTS" of any Audio Recordations made by, or attributed to the Defendant.
- 9) All "AUDIO RECORDATIONS" made by, or attributed to the Defendant.
- 10) All "VIDEO RECORDATIONS" made by, or attributed to the Defendant.
- 11) Lastly, said Defendant requests that the STATE OF ALABAMA DISCLOSE and PRODUCE any and all "DISCOVERY" not expressly sought above, that said Defendant is Constitutionally Entitled to, either in "LAW", and/or EQUITY".

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of NOV, 2004.

\_\_\_\_\_  
ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

ATTORNEY KEITH AUSBORN - "LITIGATOR"  
D/B/A "LAW OFFICE OF ATTORNEY KEITH AUSBORN"  
1224 RYAN STREET  
MONTGOMERY, ALABAMA 36107  
(334) 264-9333 (OFFICE) & (334) 264-9339 FACSIMILE  
E-MAIL ADDRESS: KAILAWYER@KNOLOGY.NET

CERTIFICATE OF SERVICE

I, ATTORNEY KEITH AUSBORN, hereby certify that I have SERVED a copy of the foregoing upon the HONORABLE S. BOYD WHIGHAM & MR. DAVID DONNIE WILLIAMS, on this the 22<sup>nd</sup> day of NOV, 2004, via "HAND DELIVERY & HAND DELIVERY".

\_\_\_\_\_  
ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)



IN THE CIRCUIT COURT FOR  
BULLOCK COUNTY, ALABAMA  
CRIMINAL DIVISION

STATE OF ALABAMA,

PLAINTIFF,

VS.

DAVID DONNIE WILLIAMS,

DEFENDANT.

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DEFENDANT'S MOTION TO SUPPRESS

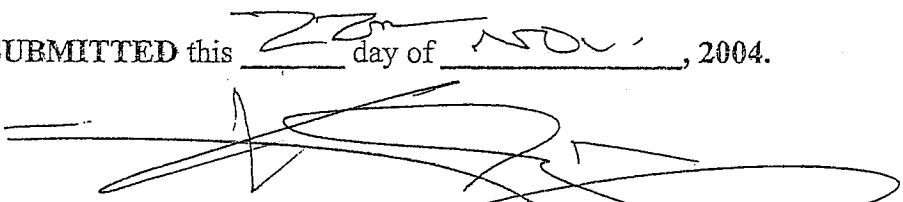
COMES NOW the Defendant in the above-styled cause, by and through His Attorney of Record, and MOVES the Court to SUPPRESS the evidence obtained against Him, as grounds for said Motion sets down and assigns the following:

- 1) The Defendant was Arrested without a Warrant of Arrest or the Warrant of Arrest was not properly issued as provided by Law, because the Constitutional Rights against unreasonable search and seizures guaranteed to the Defendant, both under the Constitution of the United States and the Constitution of the State of Alabama have been violated.
- 2) There was no probable cause for believing that an offense had been committed so as to authorize an arrest. Furthermore, if the officers who made this search had probable cause for the arrest of the Defendant on a felony charge, they had ample time to present these facts to a Magistrate or other Officer authorized to issue Search Warrants.
- 3) That the Arrest was illegal because it was not made in conformity with the Laws of the Constitution of Alabama and/or the Laws and Constitution of the United States.
- 4) That the search of the Defendant, His vehicle, and/or his residence followed an illegal Arrest.
- 5) That the Evidence was obtained by a Search of any area, which was not within the immediate presence of the Defendant.
- 6) That the Defendant's statement is inadmissible because:

- a) he was not properly advised of his Constitutional Rights prior to the time that the statement of Defendant was taken;
- b) the statement of the Defendant was not voluntary, but was given as the result of coercion, threats, promise, and etc.
- c) the statement of the Defendant was made at a time prior to Defendant being informed of the nature of the charges against him;
- d) at the time the statement was given the Defendant was informed that he was being questioned on an offense other than the charge made in this case;
- e) the statement of the Defendant was obtained in violation of the Laws and Constitution of the State of Alabama and/or the Laws and Constitution of the United States;
- f) the statement of the Defendant contained no admissions of guilt or underlying circumstances indicating guilt, but contained information not relative to this case, which would be prejudicial to the Defendant and would inflame the minds of the Jury;
- g) the statement of the Defendant was taken prior to his Arrest and Detention by authorized Officers of the Law, or by private Persons who did not advise the Defendant of his rights under the Laws and Constitution of the State of Alabama and the United States;
- h) the age and mental condition of the Defendant was such that he was incapable of understanding his rights although informed of them.

**WHEREFORE**, the Defendant **MOVES** the Court to make and enter an order **SUPPRESSING** all the evidence found and obtained as a direct and proximate result and consequence of statements of the Defendant; the Affidavit and Warrant of Arrest; and the Affidavit and Search Warrant or Warrants in this case.


RESPECTFULLY SUBMITTED this 20 day of NOV, 2004.

  
\_\_\_\_\_  
ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

ATTORNEY KEITH AUSBORN - "LITIGATOR"  
D/B/A "LAW OFFICE OF ATTORNEY KEITH AUSBORN"  
1224 RYAN STREET  
MONTGOMERY, ALABAMA 36107  
(334) 264-9333 (OFFICE) & (334) 264-9339 FACSIMILE  
E-MAIL ADDRESS: KAILAWYER@KNOLOGY.NET

CERTIFICATE OF SERVICE

I, ATTORNEY KEITH AUSBORN, hereby certify that I have SERVED a copy of the foregoing upon the HONORABLE S. BOYD WHIGHAM & MR. DAVID DONNIE WILLIAMS, on this the 20 day of NOV, 2004, via "HAND DELIVERY & HAND DELIVERY".

  
\_\_\_\_\_  
ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

32  
Filed in  
Open Court  
8:00  
11-23-07  
JLS

## IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

STATE OF ALABAMA, )  
Plaintiff, )  
Vs. )  
DAVID DONNIE WILLIAMS, ) CASE NO: CC2004-144 & 145  
Defendant. )

NOTICE OF INTENT TO REQUEST ENHANCEMENT

Comes now the State of Alabama, by and through its Assistant District Attorney, Carmella Penn, and hereby gives notice to the Defendant and his Attorney Keith Ausborn, that at the sentencing hearing set before this Court, the State expects to request the Court to enhance the sentence imposed upon the said Defendant. This request for enhancement is made on the grounds that the Defendant has at least three (3) prior felony convictions, and his sentence must be enhanced pursuant to Section 13A-5-9(c)(1), of the Code of Alabama, which states as follows:

(c)(1) In all cases when it is shown that a criminal defendant has been previously convicted of any three felonies and after such convictions has committed another felony, he or she must be punished as follows:

(1) On conviction of a Class C felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.

The State would show the prior felony convictions of the Defendant to be:

1. Escape Third Degree, Bullock County, case number CC1992-02, on July 9, 1992

2. Distribution of Cotrolled Substance, Bullock County, case number 1995-42, on June 19, 1995
3. Burglary Third Degree, Bullock County, case number 1999-215, on December 8, 1999
4. Theft of Property Second Degree, Bullock County, case number 2001-100, on November 1, 2001
5. Escape Second Degree, Bullock County, case number CC2001-104, on November 1, 2001

Respectfully submitted this 23<sup>rd</sup> day of November 2004.



Carmella Penn, Assistant District Attorney  
Third Judicial Circuit of Alabama  
P.O. Box 61, Eufaula, AL 36072-0061

CERTIFICATE OF SERVICE

I hereby certify that I have this 23<sup>rd</sup> day of November 2004, served a copy of the foregoing motion on the Honorable Keith Ausborn, Attorney for the Defendant, by U.S. Mail, postage prepaid and properly addressed to 1224 Ryan Street, Montgomery, AL 36107.



Carmella Penn

IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

STATE OF ALABAMA,  
Plaintiff,  
vs.  
DAVID DONNIE WILLIAMS,  
Defendant.

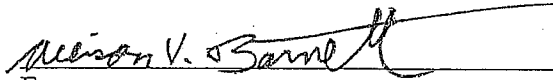
CASE NO. CC-2004-144 & 145

JURY VERDICT

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GUILTY VERDICT

We, the Jury, find the Defendant, David Donnie Williams, guilty of the offense of Stalking, as charged in the Indictment.

  
Foreperson

---

NOT GUILTY VERDICT

We, the jury, find the Defendant, David Donnie Williams, not guilty of the offense of stalking.

\_\_\_\_\_  
Foreperson

---

GUILTY VERDICT


We, the jury, find the Defendant, David Donnie Williams, guilty of the offense of Harassment/Domestic violence as charged in the Indictment.

\_\_\_\_\_  
Foreperson

---

NOT GUILTY VERDICT

We, the jury, find the Defendant, David Donnie Williams, not guilty of the offense of Harrassment/Domestic violence.

  
Foreperson

So Say We All.  
November 23, 2004

## IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

STATE OF ALABAMA,  
Plaintiff,  
vs.  
DAVID DONNIE WILLIAMS,  
Defendant.

)  
)  
)  
)  
)

CASE NO. CC-2004-144 &amp; 145

ORDER

The Defendant, David Donnie Williams, was indicted and arraigned upon an Indictment on a charge of Stalking in Case No. CC-2004-144, and upon an Indictment on a charge of Domestic Violence, Third Degree/Harassment, in Case No. CC-2004-145, and did heretofore enter pleas of not guilty to said charges. Thereupon, on the 22nd day of November, 2004, came a jury of good and lawful citizens, to-wit: Allison V. Barnett and eleven others, who being duly impaneled, sworn, and charged by the Court according to law, and before whom the trial of this cause was entered upon and continued from day to day and from time to time, said Defendant being in open Court at each and every stage and during all proceedings in this cause;

NOW, on the 23rd day of November, 2004, said jurors upon their oaths do say in Case No. CC-2004-144:

"We, the Jury, find the Defendant, David Donnie Williams, guilty of the offense of Stalking, as charged in the Indictment."

The Court, therefore, hereby adjudges the Defendant, David Donnie Williams, guilty of the crime of Stalking with sentence to be imposed at a sentencing hearing set for December 9, 2004, at 8:30 a.m., at the Bullock County Courthouse in Union Springs, Alabama. The Probation and Parole Officer is hereby directed to prepare a pre-sentence report and submit said report to the Court, with copies to the District Attorney, Boyd Whigham, and Defendant's Attorney, Keith Ausborn.

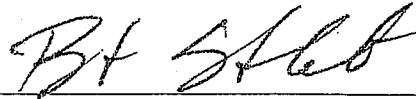
Said jurors upon their oath do say in Case No. CC-2004-145:

"We, the jury, find the Defendant, David Donnie Williams, not guilty of the offense of Harrassment/Domestic violence."



The Court, therefore, hereby adjudges the Defendant, David Donnie Williams, not guilty of the offense of Harassment/Domestic Violence, Third Degree, in Case No. CC-2004-145.

**DONE AND ORDERED** this 29th day of November, 2004.

A handwritten signature in black ink, appearing to read "Bt Smithart", written over a horizontal line.

Burt Smithart, Presiding Circuit Judge  
Third Judicial Circuit of Alabama

## IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

STATE OF ALABAMA,  
Plaintiff,

vs.

DAVID DONNIE WILLIAMS,  
Defendant.

CASE NO. CC-2004-144

SENTENCING ORDER

This matter came before the Court on this 9th day of December, 2004, for sentencing of the Defendant, the Defendant having been found guilty by a jury of the crime of Stalking, as charged in the Indictment. The Defendant and his attorney, Keith Ausborn, were present before the Court, with the State represented by District Attorney Boyd Whigham. Upon consideration of the pre-sentence report of the Probation and Parole Officer and the oral arguments and testimony presented to the Court, it is the sentence of the law and the judgment of this Court that the Defendant be, and hereby is, sentenced to the penitentiary of the State of Alabama for a period of thirty-eight (38) years. IT IS FURTHER ORDERED that the Defendant shall complete the Dual Diagnosis Substance Abuse Program and Anger and Stress Management Program with the Department of Corrections. The Defendant is further ORDERED to pay a fine in the amount \$5,000.00, court costs, \$50.00 for the crime victims compensation fund, and attorney's fees.

**DONE AND ORDERED** this 9th day of December, 2004.



Burt Smithart, Presiding Circuit Judge  
Third Judicial Circuit of Alabama

ACR359

ALABAMA JUDICIAL DATA CEN. LR  
BULLOCK COUNTY  
TRANSCRIPT OF RECORD  
CONVICTION REPORT

CC 2004 000144.00 01  
HON. BURT SMITHART

CIRCUIT COURT OF BULLOCK COUNTY

COURT ORI: 009015 J

STATE OF ALABAMA VS.

DC NO: DC 2004 000309.00

WILLIAMS DAVIE DONNIE

ALIAS:

G J: BF0434

505 JOHNSON STREET

ALIAS:

SUN: 014622787

UNION SPRINGS AL 36089

SID: 000169189

AIS:

DOB: 08/14/1965 SEX: M HT: 5 06 WT: 140 HAIR: BLK EYE: BRN  
RACE: ( )W (X)B ( )D COMPLEXION: AGE: FEATURES:

DATE OFFENSE: 04/17/2004 ARREST DATE: 04/21/2004 ARREST ORI: 0090000

CHARGES @ CONV  
STALKING

CITES  
18A-006-090

CT CL COURT ACTION  
01 CONVICTED  
00  
00

CA DATE  
11/23/2004  
00/00/0000  
00/00/0000

JUDGE: HON. BURT SMITHART

PROSECUTOR: WHIGHAM BOYD

PROBATION APPLIED GRANTED DATE REARRESTED DATE REVOKED DATE  
( )Y( )N ( )Y( )N ( )Y( )N ( )Y( )N

15-18-8, CODE OF ALA 1975 IMPOSED SUSPENDED TOTAL JAIL CREDIT  
( )Y( )N CONFINEMENT: 36 00 000 00 00 000 36 00 000 00 00 000  
PROBATION: 00 00 000 00 00 000

DATE SENTENCED: 12/09/2004 SENTENCE BEGINS: 12/09/2004

PROVISIONS	COSTS/RESTITUTION	DUE	ORDERED
PENITENTIARY	RESTITUTION	\$0.00	\$0.00
DOC/SAPP PGM	ATTORNEY FEE	\$0.00	\$0.00
	CRIME VICTIMS	\$50.00	\$50.00
	COST	\$289.00	\$289.00
	FINE	\$5000.00	\$5000.00
	MUNICIPAL FEES	\$0.00	\$0.00
	DRUG FEES	\$0.00	\$0.00
	ADDTL DEFENDANT	\$0.00	\$0.00
	DA FEES	\$0.00	\$0.00
	COLLECTION ACCT	\$0.00	\$0.00
	JAIL FEES	\$0.00	\$0.00
	TOTAL	\$5339.00	\$5339.00

APPEAL DATE SUSPENDED AFFIRMED REARREST

( )Y( )N ( )Y( )N ( )Y( )N ( )Y( )N

REMARKS:

THIS IS TO CERTIFY THAT THE  
ABOVE INFORMATION WAS EXTRACTED  
FROM OFFICIAL COURT RECORDS  
AND IS TRUE AND CORRECT.

ORDERED THAT DEF SHALL COMPLETE THE DUAL DIAGNOSIS SUBSTANCE  
ABUSE PROGRAM & ANGER & STRESS MGMT PROGRAM WITH THE D O C

*Wilbert M. Jernigan*  
WILBERT M. JERNIGAN

12/21/2004

OPERATOR: WIJ  
PREPARED: 12/21/2004

IN THE CIRCUIT COURT FOR  
BULLOCK COUNTY, ALABAMA  
CRIMINAL DIVISION

FILED IN OFFICE

JAN 10 2005

STATE OF ALABAMA,

PLAINTIFF,

VS.

DAVID DONNIE WILLIAMS,

DEFENDANT.

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CLERK-REGISTER, BULLOCK CO., ALA.)

\* CASE NO.: CC-2004-144-145-L.B.S.

DEFENDANT'S MOTION FOR "RECONSIDERATION & REDUCTION"  
OF THIRTY - EIGHT (38) YEAR SENTENCE

COMES NOW the Defendant, DAVID DONNIE WILLIAMS, via Retained Counsel of Record, ATTORNEY KEITH AUSBORN, and hereby submit to this HONORABLE COURT said "DEFENDANT'S MOTION FOR RECONSIDERATION & REDUCTION OF 'THIRTY - EIGHT (38)' YEAR SENTENCE", for the reasons succinctly articulated as follows:

Said Defendant is entitled to a "REVERSED - SPLIT SENTENCE", and/or in the alternative a "JUDGMENT OF ACQUITTAL", and/or "TRIAL DE NOVO"; as per the "DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL" & "DEFENDANT'S MOTION FOR 'TRIAL DE NOVO' PROCEEDING", concurrently filed with the Instant Motion, and hereby expressly ADOPTED & INCORPORATED herein; though not expressly set - out herein, as well as for the below mentioned factors; amongst many others unmentioned:

- A) Said Defendant was effectively deprived of "SUBSTANTIVE and/or PROCEDURAL DUE PROCESS", in that said Defendant was DENIED the Constitutional Right to have a Jury of his Peers to fairly and accurately consider "EXCULPATORY EVIDENCE" in their Jury Deliberations; notwithstanding the Jury Instructions obligating the same; of which Proper Considerations would have culminated in a "JUDGMENT OF ACQUITTAL" for said Defendant, as opposed to a "JUDGMENT OF GUILT".
- B) Said Defendant was effectively deprived of "SUBSTANTIVE and/or PROCEDURAL DUE PROCESS", in that said Defendant was DEPRIVED of his Fundamental Constitutional Right; to-wit, "RIGHT TO A FAIR & JUST TRIAL"; derivative through "JURY NULLIFICATION OF EVIDENCE" ... stemming from the Jury's Obvious FAILURE to comprehend and Apply the Jury Instructions supplied by this HONORABLE COURT. Given the same, said Judgment of Guilt, and Companion Sentence are both "ABOMINATIONS"; henceforth, the same should be NULLIFIED, and/or AMENDED, as being the "FRUIT OF

1-18-05  
Denied  
R. Stet

THE POISONOUS TREE"; thereby warranting a "TRIAL DE NOVO", and/or "J.N.O.V."

- C) Said Instant Offense was a "STALKING OFFENSE"; and NOT an Actual "CRIME OF VIOLENCE", though still SERIOUS in nature, for which said Defendant's Culpability is in Question, enlight of the "DEFENDANT'S POST-JUDGMENT MOTIONS & EXCULPATORY EVIDENCE", expressly ADOPTED & INCORPORATED herein, in support of the Instant Motion; thereby, said Defendant having retained his cloak of the "LEGAL PRESUMPTION OF INNOCENCE". Additionally, said Defendant appears to have been the Victim of "CRUEL & UNUSUAL PUNISHMENT", in that Other Convicted Defendants; similarly, and/or identically situated, have received LESSER Sentences; of which the same impacts said Defendant's Constitutional Rights to "EQUAL PROTECTION", under the "EIGHTH (8<sup>TH</sup>) & FOURTEENTH (14<sup>TH</sup>) AMENDMENT", with there being "NO AGGRAVATING FACORS" to OVERCOME this premise; however, there existing "NUMEROUS MITIGATING FACTORS" to SUBSTANTIATE the fact that the Defendant's Instant Sentence is "DISPROPORTIONATE" to the Facts and Evidence of His Case.
- D) Said Defendant had "ACCEPTED RESPONSIBILITY" for his Previous Felony Criminal Wrongdoings, and avers that prior to the Instant Offense, He was attempting to "GET HIS LIFE BACK TOGETHER"; of which the Instant Offense was NOT committed by Him. Notwithstanding the Defendant's Conviction to the contrary, said State NEVER proved the fact that the Defendant posed an "IMMINENT & SERIOUS RISK OF HARM" to the Alleged Victim; thereby, further substantiating the fact that the defendant's Sentence was EXCESSIVE; of which the same, again; impacts said Defendant's Constitutional Rights to "EQUAL PROTECTION", under the "EIGHTH (8<sup>TH</sup>) & FOURTEENTH (14<sup>TH</sup>) AMENDMENT"; since there was "NO AGGRAVATING FACORS" to OVERCOME this premise; however, there existed "NUMEROUS MITIGATING FACTORS" to SUBSTANTIATE this premise.
- E) Said Defendant denies that He has a Criminal Recidivism Propensity, and/or Anger Problem; however, said Defendant will, and can continue his assessment and/or monitoring via the "BULLOCK COUNTY PROBATION AND PAROLE OFFICE", in conjunction with enrollment in an "ANGER MANAGEMENT PROGRAM"; of which said Defendant is willing to absorb "ALL COSTS" for the same. Additionally, said Defendant promises to STRICTLY "COOPERATE" with Any Directives of the same, while concurrently maintaining a "STABLE HOME PLAN; STABLE JOB PLAN; ABSTAINING FROM VICTIM CONTACT & TIMELY PAYING COURT - ORDERED MONIES".

Lastly, in the "BEST INTERESTS OF JUSTICE; JUDICIAL EXPEDIENCY & JUDICIAL ECONOMY", said Defendant respectfully prays that said Instant Motion be GRANTED, balancing said Defendant's Constitutional Rights to the same, against any and all Opposing Interests... Unknown at this Time.

41  
RESPECTFULLY SUBMITTED this 30 day of August, 2005.

ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

ATTORNEY KEITH AUSBORN - "DEFENDANT'S COUNSEL"  
D/B/A "LAW OFFICE OF ATTORNEY KEITH AUSBORN"  
1224 RYAN STREET  
MONTGOMERY, ALABAMA 36107  
(334) 264-9333 (WK.) & (334) 264-9339 (FAX)  
E-MAIL ADDRESS: KAILLAWYER@KNOLOGY.NET

CERTIFICATE OF SERVICE

I, ATTORNEY KEITH AUSBORN, hereby certify that I have SERVED a copy of the foregoing upon the HON. S. BOYD WHIGHAM & MR. DAVID DONNIE WILLIAMS, on this the 30 day of August, 2005, all via "U. S. MAIL - REGULAR DELIVERY" at their Last Known Addresses.

ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)



42

IN THE CIRCUIT COURT FOR  
BULLOCK COUNTY, ALABAMA  
CRIMINAL DIVISION

STATE OF ALABAMA,

PLAINTIFF,

VS.

DAVID DONNIE WILLIAMS,

DEFENDANT.

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\* CASE NO.: CC-2004-144-145-L.B.S.

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DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING  
ORDER OF VERDICT

COMES NOW the Defendant, DAVID DONNIE WILLIAMS, via Retained Counsel of Record, ATTORNEY KEITH AUSBORN, and hereby submit to this HONORABLE COURT said "DEFENDANT'S MOTION FOR JUDGMENT NOTWITHSTANDING ORDER OF VERDICT", for the reasons succinctly articulated as follows:

Said Defendant is entitled to a "JUDGMENT OF ACQUITTAL", and at the very least...a "TRIAL DE NOVO", as per the "DEFENDANT'S MOTION FOR TRIAL DE NOVO", concurrently filed with the Instant Motion, in that the evidence was INSUFFICIENT & INCONCLUSIVE to support the Jury's Verdict of Guilt, considering the below mentioned factors; amongst many others unmentioned:

- 1) "NO WITNESS" testified that they Physically Observed the Defendant commit the offense of "STALKING" of the Alleged Victim on the Date and Time, as noted in the State's Indictment. Moreover, as this HONORABLE COURT will no doubt recall, Each and Every One of the State's Witnesses were AGGRESSIVELY confronted on "CROSS - EXAMINATION"; wherein, Each of the Witnesses were either IMPEACHED, and/or gave "EXCULPATORY EVIDENCE" in favor of the Defendant; thereby, lending itself to "REASONABLE DOUBT".
- 2) "NO REASONABLE & CREDIBLE MOTIVE" was presented by the State to establish the Defendant's Inducement to commit the Offense of "STALKING"; however, to the contrary, SUBSTANTIAL Evidence was presented on behalf of the Defendant...to CORROBORATE the fact that the Alleged Victim was in fact "CRAZY IN LOVE" with the Defendant; thereby, also lending itself to "REASONABLE DOUBT".

1-18-05  
Denied  
Rt. Self. A



3) **INCONCLUSIVE, INCONSISTENT & INSUFFICIENT**

Testimonial and Demonstrative evidence was presented by the State, in an attempt to establish the Defendant's Liability to the Instant Offense; of which, a reasonable construction and application of the same by an Objective Trier of Fact lends itself to the Un-Mistakeable Fact that the Defendant...at best, had An Extensive, Possibly On-Going, and Voluntary INTIMATE Relationship

with the Alleged Victim; however, the Defendant was NOT the Perpetrator of a "STALKING" Offense; but, in fact, was the Unfortunate Victim Himself of the Revengeful Actions of a "SCORNE - LOVER"; thereby, also lending itself to "REASONABLE DOUBT".

- 4) "NO PRIMA FACIE CASE" was presented by the State to establish the Defendant's Guilt; vis-à-vis, the Plaintiff's Meeting of its Legal Obligation for Each and Every Material Element of the Offense of "STALKING"; henceforth, given the ABSENCE of said Legal Evidence, it was Reversible Error for the Trier of Fact to have adjudicated the Defendant GUILTY of "STALKING"; thereby, also lending itself to "REASONABLE DOUBT".

- 5) By Law, in as much that the State FAILED to Meet its Legal Burden of proving the Defendant Guilty "BEYOND A REASONABLE DOUBT"; this HONORABLE COURT is empowered by Law, and/or Equity to GRANT said "DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL".

Lastly, in the "BEST INTERESTS OF JUSTICE; JUDICIAL EXPEDIENCY & JUDICIAL ECONOMY", said Defendant respectfully prays that said Instant Motion be GRANTED, balancing said Defendant's Constitutional Rights to the same, against any and all Opposing Interests...Unknown at this Time.

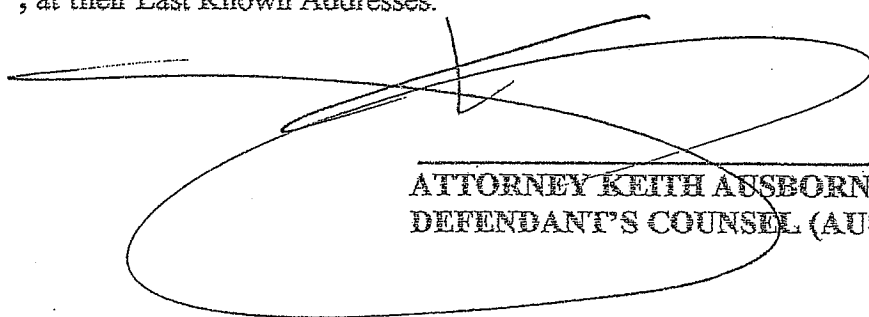
RESPECTFULLY SUBMITTED this 8 day of Jan, 2005.

\_\_\_\_\_  
ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

ATTORNEY KEITH AUSBORN - "DEFENDANT'S COUNSEL"  
D/B/A "LAW OFFICE OF ATTORNEY KEITH AUSBORN"  
1224 RYAN STREET  
MONTGOMERY, ALABAMA 36107  
(334) 264-9333 (WK.) & (334) 264-9339 (FAX)  
E-MAIL ADDRESS: KAILAWYER@KNOLOGY.NET

CERTIFICATE OF SERVICE

I, ATTORNEY KEITH AUSBORN, hereby certify that I have SERVED a copy of the foregoing upon the HON. S. BOYD WRIGHT & MR. DAVID DONNIE WILLIAMS, on this the 22 day of August, 2005, all via "U. S. MAIL - REGULAR DELIVERY", at their Last Known Addresses.



\_\_\_\_\_  
ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

IN THE CIRCUIT COURT FOR  
BULLOCK COUNTY, ALABAMA  
CRIMINAL DIVISION

STATE OF ALABAMA,

PLAINTIFF,

VS.

DAVID DONNIE WILLIAMS,

DEFENDANT.

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\* CASE NO.: CC-2004-144-145-L.B.S.

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DEFENDANT'S MOTION FOR A 'TRIAL DE NOVO' PROCEEDING"

COMES NOW the Defendant, DAVID DONNIE WILLIAMS, via Retained Counsel of Record, ATTORNEY KEITH AUSBORN, and hereby submit to this HONORABLE COURT said "DEFENDANT'S MOTION FOR A 'TRIAL DE NOVO' PROCEEDING", for the reasons succinctly articulated as follows:

Said Defendant is entitled to a "TRIAL DE NOVO", and/or in the alternative a "JUDGMENT OF ACQUITTAL"; as per the "DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL", concurrently filed with the Instant Motion, in that the evidence was INSUFFICIENT & INCONCLUSIVE to support the Jury's Verdict of Guilt, considering the below mentioned factors; amongst many others unmentioned:

- 1) "NO WITNESS" testified that they Physically Observed the Defendant commit the offense of "STALKING" of the Alleged Victim on the Date and Time, as noted in the State's Indictment. Moreover, as this HONORABLE COURT will no doubt recall, Each and Every One of the State's Witnesses were AGGRESSIVELY confronted on "CROSS - EXAMINATION"; wherein, Each of the Witnesses were either IMPEACHED, and/or gave "EXCULPATORY EVIDENCE" in favor of the Defendant; thereby, lending itself to "REASONABLE DOUBT".
- 2) "NO REASONABLE & CREDIBLE MOTIVE" was presented by the State to establish the Defendant's Inducement to commit the Offense of "STALKING"; however, to the contrary, SUBSTANTIAL Evidence was presented on behalf of the Defendant...to CORROBORATE the fact that the Alleged Victim was in fact "CRAZY IN LOVE" with the Defendant; thereby, also lending itself to "REASONABLE DOUBT".
- 3) INCONCLUSIVE, INCONSISTENT & INSUFFICIENT Testimonial and Demonstrative evidence was presented by the

1-18-05

Denied  
B+Slet

State, in an attempt to establish the Defendant's Liability to the Instant Offense; of which, a reasonable construction and application of the same by an Objective Trier of Fact lends itself to the Un-Mistakeable Fact that the Defendant...at best; had An Extensive, Possibly On-Going, and Voluntary INTIMATE Relationship with the Alleged Victim; however, the Defendant was NOT the Perpetrator of a "STALKING" Offense; but, in fact, was the Unfortunate Victim Himself of the Revengeful Actions of a "SCORNE - LOVER"; thereby, also lending itself to "REASONABLE DOUBT".

- 4) "NO PRIMA FACIE CASE" was presented by the State to establish the Defendant's Guilt, vis-à-vis, the Plaintiff's Meeting of its Legal Obligation for Each and Every Material Element of the Offense of "STALKING"; henceforth, given the ABSENCE of said Legal Evidence, it was Reversible Error for the Trier of Fact to have adjudicated the Defendant GUILTY of "STALKING"; thereby, also lending itself to "REASONABLE DOUBT".
- 5) By Law; in as much that the State FAILED to Meet its Legal Burden of proving the Defendant Guilty "BEYOND A REASONABLE DOUBT"; this HONORABLE COURT is empowered by Law, and/or Equity to GRANT said "DEFENDANT'S MOTION FOR A 'TRIAL DE NOVO' PROCEEDING".

Lastly, in the "BEST INTERESTS OF JUSTICE; JUDICIAL EXPEDIENCY & JUDICIAL ECONOMY", said Defendant respectfully prays that said Instant Motion be GRANTED, balancing said Defendant's Constitutional Rights to the same, against any and all Opposing Interests...Unknown at this Time.

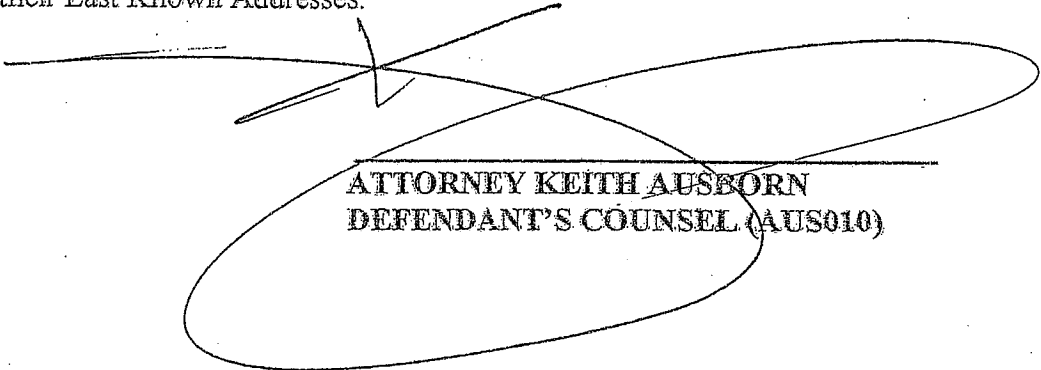
RESPECTFULLY SUBMITTED this 8 day of SEP, 2005.

ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

ATTORNEY KEITH AUSBORN - "DEFENDANT'S COUNSEL"  
D/B/A "LAW OFFICE OF ATTORNEY KEITH AUSBORN"  
1224 RYAN STREET  
MONTGOMERY, ALABAMA 36107  
(334) 264-9333 (WK.) & (334) 264-9339 (FAX)  
E-MAIL ADDRESS: KA1LAWYER@KNOLOGY.NET

CERTIFICATE OF SERVICE

I, **ATTORNEY KEITH AUSBORN**, hereby certify that I have **SERVED** a copy of the foregoing upon the **HON. S. BOND WHIGHAM & MR. DAVID DONNIE WILLIAMS**, on this the 25 day of Sept, 2005, all via "U. S. MAIL - REGULAR DELIVERY" at their Last Known Addresses.



**ATTORNEY KEITH AUSBORN**  
**DEFENDANT'S COUNSEL (AUS010)**

IN THE CIRCUIT COURT FOR  
BULLOCK COUNTY, ALABAMA  
CRIMINAL DIVISION

STATE OF ALABAMA,

PLAINTIFF,

VS.

DAVID DONNIE WILLIAMS,

DEFENDANT.

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\* CASE NO.: CC-2004-144-145-L.B.S.  
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DEFENDANT'S MOTION FOR "STAY" OF THIRTY - EIGHT (38) YEAR  
SENTENCE...PENDING DISPOSITION OF ALL POST-JUDGMENT MOTIONS

COMES NOW the Defendant, DAVID DONNIE WILLIAMS, via Retained Counsel of Record, ATTORNEY KEITH AUSBORN, and hereby submit to this HONORABLE COURT said "DEFENDANT'S MOTION FOR STAY OF 'THIRTY - EIGHT YEAR SENTENCE' ... PENDING DISPOSITION OF ALL POST - JUDGMENT MOTIONS", for the reasons succinctly articulated as follows:

- 1) Said Defendant is concurrently filing a Number of Post-Judgment Motions with the Instant Motion; to-wit, "DEFENDANT'S MOTION FOR TRIAL DE NOVO; DEFENDANT'S MOTION FOR J.N.O.V.; DEFENDANT'S MOTION FOR RECONSIDERATION/REDUCTION OF 12/09/04 SENTENCE", for which said Aforementioned Motions should be resolved PRIOR to said Defendant's Continued Service of the Instant Sentence, procured through the Instant Judgment of Guilt.
- 2) Said Defendant's Post-Judgment Motions are "MERITORIOUS" Contentions; both in Law and Fact, with a Fair and Accurate Disposition of the same, more likely to result in FAVORABLE Rulings for the Defendant; henceforth, for the Defendant to continue to remain under Service of Sentence...pursuant to an Erroneous Jury Verdict, IMMEDIATELY presents "IRREPARABLE HARM" to the Defendant, while a STAY of Judgment and Companion Sentence is NOT likely to result in "SUBSTANTIAL PREJUDICE" to the State, nor Victim, pending the Disposition of the Instant Post- Judgment Motions.
- 3) Said Defendant is NOT a "FLIGHT CANDIDATE"; if a STAY is Issued, nor is the Defendant receptive to "CRIMINAL RECIDIVISM"; henceforth this HONORABLE COURT would be Justified in giving (FAVORABLE) Consideration to the Instant Motion.

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Lastly, in the "BEST INTERESTS OF JUSTICE; JUDICIAL EXPEDIENCY & JUDICIAL ECONOMY", said Defendant respectfully prays that said Instant Motion be GRANTED, balancing said Defendant's Constitutional Rights to the same, against any and all Opposing Interests...Unknown at this Time.

RESPECTFULLY SUBMITTED this 8 day of August, 2005.

ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

ATTORNEY KEITH AUSBORN - "DEFENDANT'S COUNSEL"  
D/B/A "LAW OFFICE OF ATTORNEY KEITH AUSBORN"  
1224 RYAN STREET  
MONTGOMERY, ALABAMA 36107  
(334) 264-9333 (WK.) & (334) 264-9339 (FAX)  
E-MAIL ADDRESS: KA1LAWYER@KNOLOGY.NET

CERTIFICATE OF SERVICE

I, ATTORNEY KEITH AUSBORN, hereby certify that I have SERVED a copy of the foregoing upon the HON. S. BOYD WHIGHAM & MR. DAVID DONNIE WILLIAMS, on this the 8 day of August, 2005, all via "U. S. MAIL - REGULAR DELIVERY" at their Last Known Addresses.

ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

## IN THE CIRCUIT COURT FOR BULLOCK COUNTY, ALABAMA

STATE OF ALABAMA,  
PLAINTIFF,

VS.

DAVID DONNIE WILLIAMS,  
DEFENDANT.

CC-2004-144-145

FILED IN OFFICE

JAN 14 2005

CLERK-REGISTER, BULLOCK CO., ALA.

STATE'S RESPONSE TO  
DEFENDANT'S MOTIONS

COMES NOW the State of Alabama and responds to the several motions filed by the Defendant and says the following:

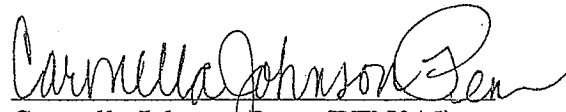
1. The Defendant David Donnie Williams has previously been convicted of three or more felonies, making him a Habitual Offender. Defendant's Sentence is well within the sentencing range of 15 - 99 years or life and is indeed near the lower end of that range.
2. Defendant's culpability is not in question as a jury of his peers found him guilty beyond a reasonable doubt of the charges.
3. Defendant offers no new evidence to support his motion for a new trial.
4. Defendant argues his case in making the motions. Those arguments here are misplaced as Your Honor has conducted a trial where Defense Counsel presented his testimony and cross-examined witnesses and made open and closing remarks. The arguments made were considered by the fact-finder at trial and Your Honor denied Defendant's Motions as to the Affirmative Charge. Defendant has failed to state a single ground on which a new trial is warranted in this case.
5. Defendant is requesting this Judge replace the jury's verdict with a verdict of Not Guilty or Judgment of Acquittal because, as he would have this Court believe, the evidence was insufficient and inconclusive. These are all issues in the Jury's province and Your Honor instructed the Jury as to the evidence and what they should and should not consider. Defendant was satisfied with those instructions and the Jury followed the Judge's instructions in coming to a verdict.
6. Defendant is not entitled to a stay on his sentence. He can file an appeals' bond if he appeals this case. However, Defendant has several escape

-25-05

charges and he is a flight risk if allowed to be released considering the magnitude of the charges and the sentence received.

WHEREFORE, PREMISES CONSIDERED, the State respectfully asks this Court to deny Defendant's Motions filed in this case without hearing to better serve the Interests of Justice, Judicial Expediency and Judicial Economy.

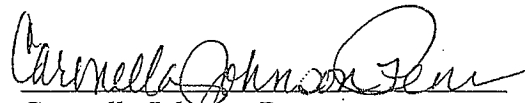
Respectfully Submitted this the 14<sup>th</sup> day of January, 2004.

  
Carmella Johnson Penn (PEN015)  
Assistant District Attorney  
P.O. Box 5027  
Union Springs, Alabama 36089  
334-738-3720

**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing Response upon counsel for Defendant, Attorney Keith Ausborn by placing a copy in the United States Mail properly addressed and postage prepaid.

Done this the 14<sup>th</sup> day of January, 2004

  
Carmella Johnson Penn

FILED IN OFFICE

FEB 04 2005

January 28, 2005

CLERK-REGISTER, BULLOCK CO., ALA

David Williams  
AIS#169189 G2C-230  
1000 St. Clair Rd.  
Springville, AL 35146

To: Clerk Wilbert Jernigan  
Circuit Court Bullock County  
217 N. Prairie Street  
Union Springs, Al 36089

Re: Information regarding proceedings in case State of Alabama vs. David  
Donnie Williams, case No. CC-04-144-145.

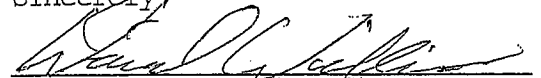
Dear Clerk,

My greetings to you. I'm writing in regards of my appeal. since I was  
sentence in December 2004 I have not heard from my attorney Keith Ausborn  
nor this Court concerning my appeal. I have not waived my rights to appeal  
and I wish to appeal my conviction and sentence.

I would like to know whether a Notice of Appeal has been filed, wheether  
a motion for new trial has been filed and what attorney will represent me  
on appeal. Additionally, I would like a copy of all documents concerning  
my appeal.

If it's possible would you please forward me the requested information.  
I would like to thank you for your time and consideration in this matter.

Sincerely,



CC: Alabama Court of Criminal Appeals  
Attorney ~~vs~~ Ausborn

REV. 4/1/97

**NOTICE OF APPEAL TO THE ALABAMA COURT OF CRIMINAL APPEALS  
BY THE TRIAL COURT CLERK**

David Donnie Williams  
 APPELLANT'S NAME  
 (as it appears on the indictment)

V. ☒ STATE OF ALABAMA  
☐ CITY OF \_\_\_\_\_

☒ CIRCUIT ☐ DISTRICT ☐ JUVENILE COURT OF Bullock COUNTY

CIRCUIT/DISTRICT/JUVENILE JUDGE: Hon. J. Bernard Smithart

DATE OF NOTICE OF APPEAL: January 31, 2005

(NOTE: If the appellant is incarcerated and files notice of appeal, this date should be the date on the certificate of service, or if there was no certificate of service, use the postmark date on the envelope.)

## INDIGENCY STATUS:

Granted Indigency Status at Trial Court: ☐ Yes ☒ No  
 Appointed Trial Counsel Permitted to Withdraw on Appeal: ☐ Yes ☒ No  
 Indigent Status Revoked on Appeal: ☐ Yes ☒ No

## DEATH PENALTY:

Does this appeal involve a case where the death penalty has been imposed? ☐ Yes ☒ No

## TYPE OF APPEAL: (Please check the appropriate block.)

☒ State Conviction ☐ Pretrial Appeal by State ☐ Juvenile Transfer Order  
☐ Rule 32 Petition ☐ Contempt Adjudication ☐ Juvenile Delinquency  
☐ Probation Revocation ☐ Municipal Conviction ☐ Habeas Corpus Petition  
☐ Mandamus Petition ☐ Writ of Certiorari ☐ Other(specify) \_\_\_\_\_

IF THIS APPEAL IS FROM AN ORDER DENYING A PETITION (I.E. RULE 32 PETITION, WRIT OF HABEAS CORPUS, ETC.) OR FROM ANY OTHER ORDER ISSUED BY THE TRIAL JUDGE, COMPLETE THE FOLLOWING:

TRIAL COURT CASE NO.: \_\_\_\_\_

DATE ORDER WAS ENTERED: \_\_\_\_\_ PETITION: ☐ Dismissed ☐ Denied ☐ Granted

IF THIS IS AN APPEAL FROM A CONVICTION, COMPLETE THE FOLLOWING:

DATE OF CONVICTION: 11-23-04 DATE OF SENTENCE: 12-9-04

## YOUTHFUL OFFENDER STATUS:

Requested: ☐ Yes ☒ No Granted: ☐ Yes ☐ No

## LIST EACH CONVICTION BELOW: (attach additional page if necessary)

1. Trial Court Case No. CC-2004-144 CONVICTION: Stalking  
 Sentence: 38 years

2. Trial Court Case No. \_\_\_\_\_ CONVICTION: \_\_\_\_\_  
 Sentence: \_\_\_\_\_

3. Trial Court Case No. \_\_\_\_\_ CONVICTION: \_\_\_\_\_  
 Sentence: \_\_\_\_\_

POST-JUDGMENT MOTIONS FILED: (complete as appropriate)	Date Filed	Date Denied	Continued by Agreement To (Date)
<input checked="" type="checkbox"/> Motion for New Trial	<u>1/10/05</u>	<u>1/18/05</u>	_____
<input type="checkbox"/> Motion for Judgment of Acquittal	_____	_____	_____
<input type="checkbox"/> Motion to Withdraw Guilty Plea	_____	_____	_____
<input checked="" type="checkbox"/> Motion in Arrest of Judgment	<u>1/10/05</u>	<u>1/18/05</u>	_____
<input checked="" type="checkbox"/> Other <u>Motion for Stay</u>	<u>1/10/05</u>	<u>1/18/05</u>	_____

COURT REPORTER(S): Kelli Mills  
 ADDRESS: Bullock County Courthouse  
Union Springs, Alabama 36089

APPELLATE COUNSEL: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_

APPELLANT: (IF PRO SE) AIS# 169189  
 ADDRESS: 1000 St. Clair Road  
Springville, Alabama 35146

APPELLEE (IF CITY APPEAL): \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_

I certify that the information provided above is accurate to the best of my knowledge and I have served a copy of this Notice of Appeal on all parties to this action on this 9th day of February, 2005.

Wilbert M. Gernigan  
 CIRCUIT COURT CLERK

IN THE CIRCUIT COURT FOR  
BULLOCK COUNTY, ALABAMA  
CRIMINAL DIVISION

FILED IN OFFICE

FEB 24 2005

STATE OF ALABAMA,

PLAINTIFF,

VS.

DAVID DONNIE WILLIAMS,

DEFENDANT.

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\* CASE NO.: CC-2004-144-L.B.S.

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CLERK-REGISTRY, BULLOCK COUNTY, ALA.

DEFENDANT'S AMENDED NOTICE OF APPEAL

COMES NOW the Defendant, DAVID DONNIE WILLIAMS, via Counsel of Record, ATTORNEY KEITH AUSBORN, and hereby submit to this HONORABLE COURT said "DEFENDANT'S AMENDED NOTICE OF APPEAL"; whereby said Defendant hereby APPEALS both His "NOVEMBER 23, 2004 JUDGMENT OF CONVICTION"; "DECEMBER 09, 2004 SENTENCE" & "JANUARY 18, 2005 ADVERSE POST - JUDGMENT ORDERS" to THE HONORABLE ALABAMA COURT OF CRIMINAL APPEALS.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of February, 2005.

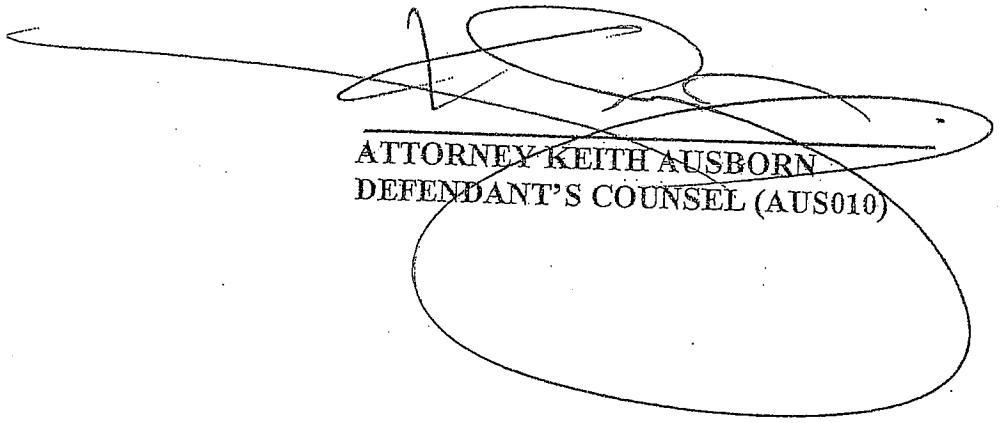
ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

ATTORNEY KEITH AUSBORN - "DEFENDANT'S COUNSEL"  
D/B/A "LAW OFFICE OF ATTORNEY KEITH AUSBORN"  
1224 RYAN STREET  
MONTGOMERY, ALABAMA 36107  
(334) 264-9333 (WK.) & (334) 264-9339 (FAX)  
E-MAIL ADDRESS: KAILAWYER@KNOLOGY.NET



CERTIFICATE OF SERVICE

I, ATTORNEY KEITH AUSBORN, hereby certify that I have SERVED a copy of the foregoing upon the HON. LANE W. MANN; HON. TROY R. KING; HON. BENJAMIN C. REEVES; HON. KELLI MILLS & MR. DAVID DONNIE WILLIAMS, on this the 22<sup>nd</sup> day of August, 2005, all via "U. S. MAIL - REGULAR DELIVERY/FACSIMILE; BOX DELIVERY; U. S. MAIL - REGULAR DELIVERY; U. S. MAIL - REGULAR DELIVERY & U. S. MAIL - REGULAR DELIVERY", at their Last Known Addresses.

  
ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

FILED IN OFFICE

State of Alabama  
Unified Judicial System

Form ARAP- 26 (front) 8/91

COURT OF CRIMINAL APPEALS  
DOCKETING STATEMENT

Criminal Appeal Number

CR ~~11/23/04~~ 01/18/05

## A. GENERAL INFORMATION:

☒ CIRCUIT COURT ☐ DISTRICT COURT ☐ JUVENILE COURT OF BULLOCK COUNTYDAVID DONNIE WILLIAMS AppellantV. ☒ STATE OF ALABAMA ☐ MUNICIPALITY OF \_\_\_\_\_

Case Number <u>CC-2004-144-L.B.S.</u>	Date of Complaint or Indictment <u>UNKNOWN</u>	Date of Judgment/Sentence/Order <u>01/18/05</u>
Number of Days of Trial/Hearing <u>(02)</u> Days	Date of Notice of Appeal <u>N/A</u>	Written: <u>01/31/05</u>
Indigent Status Requested: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Indigent Status Granted: <input type="checkbox"/> Yes <input type="checkbox"/> No <u>"PENDING"</u>	

B. REPRESENTATION: NOTE: "APPOINTED COUNSEL" REQ. PENDING.

Is Attorney Appointed or Retained? <input type="checkbox"/> Appointed <input checked="" type="checkbox"/> Retained: <u>ONLY</u>	If no attorney, will appellant represent self? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Appellant's Attorney (Appellant if pro se) (Attach additional pages if necessary) <u>"APPOINTED COUNSEL" REQ. PENDING.</u>	Telephone Number: <u>N/A</u>
Address: <u>N/A</u>	City: <u>N/A</u>
State: <u>N/A</u>	Zip Code: <u>N/A</u>

## C. CODEFENDANTS: List each CODEFENDANT and the codefendant's case number.

Codefendant: <u>N/A</u>	Case Number: <u>N/A</u>
Codefendant: <u>N/A</u>	Case Number: <u>N/A</u>
Codefendant: <u>N/A</u>	Case Number: <u>N/A</u>

## D. TYPE OF APPEAL: Please check the applicable block.

- ☒ 1 State Conviction      ☐ 4 Pretrial Order      ☐ 7 Juvenile Transfer Order      ☐ 10 Other (Specify) \_\_\_\_\_  
☐ 2 Post-Conviction Remedy      ☐ 5 Contempt Adjudication      ☐ 8 Juvenile Delinquency \_\_\_\_\_  
☐ 3 Probation Revocation      ☐ 6 Municipal Conviction      ☐ 9 Habeas Corpus Petition \_\_\_\_\_

## E. UNDERLYING CONVICTION/CHARGE: Regardless of the type of appeal checked in Section D, please check the box beside each offense category for which the appellant has been convicted or charged as it relates to this appeal. Also include the applicable section of the Code of Alabama for State convictions.

- ☐ 1 Capital Offense - § \_\_\_\_\_      ☐ 6 Trafficking in Drugs - § \_\_\_\_\_      ☐ 11 Fraudulent Practices - § \_\_\_\_\_  
☐ 2 Homicide - § \_\_\_\_\_      ☐ 7 Theft - § \_\_\_\_\_      ☐ 12 Offense Against Family - § \_\_\_\_\_  
☐ 3 Assault - § \_\_\_\_\_      ☐ 8 Damage or Intrusion to Property - § \_\_\_\_\_      ☐ 13 Traffic - DUI - § \_\_\_\_\_  
☐ 4 Kidnapping/Unlawful Imprisonment - § \_\_\_\_\_      ☐ 9 Escape - § \_\_\_\_\_      ☐ 14 Traffic - Other - § \_\_\_\_\_  
☐ 5 Drug Possession - § \_\_\_\_\_      ☐ 10 Weapons/Firearms - § \_\_\_\_\_      ☒ 15 Miscellaneous (Specify): "STALKING" - § 13A-6-90

## F. DEATH PENALTY:

Does this appeal involve a case where the death penalty has been imposed? ☐ Yes ☒ No

## G. TRANSCRIPT:

1. Will the record on appeal have a reporter's transcript? ☒ Yes ☐ No  
 2. If the answer to question "1" is "Yes," state the date the Reporter's Transcript Order was filed. 02/22/05 (Date)  
 3. If the answer to question "1" is "No":  
 (a) Will a stipulation of facts be filed with the circuit clerk? ☐ Yes ☒ No  
 (b) Will the parties stipulate that only questions of law are involved and will the trial court certify the questions? ☐ Yes ☒ No

NOTE: If the appeal is from the district or juvenile court and the answer to question "1" is "No," then a positive response is required for question 3(a) or 3(b). N/A

State of Alabama Unified Judicial System Form ARAP-1C 8/91	REPORTER'S TRANSCRIPT ORDER -- CRIMINAL See Rules 10(c) and 11(b) of the Alabama Rules of Appellate Procedure (A.R. App.P.)	Criminal Appeal Number <b>FILED IN OFFICE</b>
--	---	--

TO BE COMPLETED BY COUNSEL FOR THE APPELLANT OR BY THE APPELLANT IF NOT REPRESENTED AND FILED WITH THE WRITTEN NOTICE OF APPEAL OR FILED WITHIN 7 DAYS AFTER ORAL NOTICE OF APPEAL IS GIVEN.

☒ CIRCUIT COURT ☐ DISTRICT COURT ☐ JUVENILE COURT OF BULLOCK COUNTY  
DAVID DONNIE WILLIAMS  
v. ☒ STATE OF ALABAMA ☐ MUNICIPALITY OF CLERK-REGISTER, BULLOCK CO., ALA. Appellant

FEB 24 2005

Case Number <u>2004-144-L.B.S.</u>	Date of Judgment/Sentence/Order <u>11/23/04-12/09/04-01/18/05</u>
Date of Notice of Appeal Oral: <u>N/A</u> Written: <u>01/31/05</u>	Indigent Status Granted: <input checked="" type="checkbox"/> <u>PENDING</u> <input type="checkbox"/> Yes <input type="checkbox"/> No

PART 1. TO BE SIGNED IF THE APPEAL WILL NOT HAVE A COURT REPORTER'S TRANSCRIPT: MOTION FILED ON 02/22/05  
I CERTIFY THAT NO REPORTER'S TRANSCRIPT IS EXPECTED AND THAT THE RECORD ON APPEAL SHALL CONSIST OF THE CLERK'S RECORD ONLY. IF THE APPEAL IS FROM DISTRICT COURT OR JUVENILE COURT, I ALSO CERTIFY (1) THAT A STIPULATION OF FACTS WILL BE INCLUDED IN THE CLERK'S RECORD AND THAT THE APPELLANT WAIVES HIS RIGHT TO A JURY TRIAL IF SO ENTITLED; OR (2) THAT THE PARTIES HAVE STIPULATED THAT ONLY QUESTIONS OF LAW ARE INVOLVED AND THAT THE QUESTIONS WILL BE CERTIFIED BY THE JUVENILE/DISTRICT COURT FOR INCLUSION IN THE CLERK'S RECORD (SEE RULE 28(A)(1), ALABAMA RULES OF JUVENILE PROCEDURE, AND §12-12-72, CODE OF ALABAMA 1975).

Signature \_\_\_\_\_ Date \_\_\_\_\_ Print or Type Name \_\_\_\_\_

PART 2. DESIGNATION OF PROCEEDINGS TO BE TRANSCRIBED. Request is hereby made to the court reporter(s) indicated below for a transcript of the following proceedings in the above referenced case (see Rule 10(c)(2), Alabama Rules of Appellate Procedure (A.R. App.P.)):

## MARK PROCEEDINGS REQUESTED:

A. ☒ TRIAL PROCEEDINGS - Although this designation will include the judgment and sentence proceedings, a transcript of the organization of the jury and arguments of counsel must be designated separately.

B. ☒ ORGANIZATION OF THE JURY - This designation will include voir dire examination and challenges for cause. Note that in noncapital cases the voir dire of the jury will not be recorded unless the trial judge so directs. (See Rule 19.4, ARCP.)

C. ☒ ARGUMENTS OF COUNSEL - Note that in noncapital cases the arguments of counsel will not be recorded unless the trial judge so directs. (See Rule 19.4, ARCP.)

COURT REPORTER(S)  
HON. KELLI MILLS  
BULLOCK COUNTY CT. CLERK  
UNION SPRINGS, ALA  
36089

IN ADDITION TO ANY PROCEEDINGS DESIGNATED ABOVE, SPECIAL REQUEST IS HEREBY MADE TO INCLUDE THE FOLLOWING PROCEEDINGS IN THE REPORTER'S TRANSCRIPT PORTION OF THE RECORD ON APPEAL. (ATTACH ADDITIONAL PAGES IF NECESSARY):

## ADDITIONAL PROCEEDINGS REQUESTED

DATE

COURT REPORTER(S)

D.			
E.	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
F.			
G.			

IMPORTANT NOTICE: The court reporter who reported the proceedings for which a transcript is requested must be identified on this form to be effective. Additionally, it is important to note that the appellant may not be permitted to raise any issue on appeal relating to any proceedings in the case that are not specifically designated on this form for inclusion in the reporter's transcript. A general designation such as "all proceedings" is not sufficient. (See Rule 10(c)(2), A.R. App.P.)

PART 3. MUST BE SIGNED IF THE APPEAL WILL HAVE A COURT REPORTER'S TRANSCRIPT: MOTION PENDING

I CERTIFY THAT I HAVE DISTRIBUTED THIS FORM AS SET OUT BELOW. I ALSO CERTIFY (1) THAT I HAVE MADE SATISFACTORY FINANCIAL ARRANGEMENTS WITH EACH COURT REPORTER LISTED ABOVE FOR PREPARING HIS OR HER PORTION OF THE REPORTER'S TRANSCRIPT HEREIN REQUESTED; OR (2) THAT THE APPELLANT PROCEEDED AT TRIAL AS AN INDIGENT AND THAT THAT STATUS HAS NOT BEEN REVOKED; OR, (3) THAT THE APPELLANT HAS BEEN GIVEN PERMISSION TO PROCEED ON APPEAL IN FORMA PAUPERIS.

Signature \_\_\_\_\_ Date 02/22/05 Print or Type Name KELIA ADAMS, CLERK

DISTRIBUTION: Original filed with Clerk of Trial Court and copies mailed to: (1) Clerk of the Court of Criminal Appeals, (2) the District Attorney, (3) the Attorney General or the municipal prosecutor in lieu of the District Attorney and the Attorney General if the appeal is from a municipal conviction, and (4) to each Court Reporter who reported proceedings.

FILED IN OFFICE

FEB 24 2005

IN THE CIRCUIT COURT FOR  
BULLOCK COUNTY, ALABAMA  
CRIMINAL DIVISION

CLERK-REGISTER, BULLOCK CO., ALA.

STATE OF ALABAMA,

PLAINTIFF,

VS.

DAVID DONNIE WILLIAMS,

DEFENDANT.

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COMES NOW the Defendant, DAVID DONNIE WILLIAMS, via Counsel of Record, ATTORNEY KEITH AUSBORN, and hereby submit to this HONORABLE COURT said "DEFENDANT'S MOTION FOR FREE TRANSCRIPT AND DEFENDANT'S MOTION FOR "IN FORMA PAUPERIS" STATUS, for the reasons succinctly articulated below:

- A) Said Defendant has a "MERITORIOUS" APPEAL that He desperately desires to Prosecute before THE HONORABLE ALABAMA COURT OF CRIMINAL APPEALS.
- B) Unless this HONORABLE COURT GRANTS said Defendant a "FREE TRANSCRIPT" and "IN FORMA PAUPERIS" STATUS, said Defendant will be financially unable to Prosecute said "MERITORIOUS" APPEAL.
- C) Said Defendant and Family are without any funds to pay to THE COURT REPORTER, and/or this HONORABLE COURT to acquire said "TRIAL TRANSCRIPT" & satisfy the "APPEAL DOCKET FEE" to THE HONORABLE ALABAMA COURT OF CRIMINAL APPEALS.
- D) The Defendant's Mother, Sisters & Other Family Members have represented To the Defendant's Counsel that they have gone into SUBSTANTIAL "DEBT" exhausting their Surplus, and borrowing Monies to pay Attorney Fees for the Trial - Level Defense; of which the Undersigned Counsel Handled the Post - Judgment Motions Representation "PRO BONO". Accordingly, they further represent that they do NOT anticipate coming into Any Additional Funds to allocate for the "TRANSCRIPT & APPEAL COSTS", with Additional Attempts...being deemed an "EXERCISE IN FUTILITY".

- E) Said Defendant is both "INCARCERATED & INDIGENT", and NOT realistically expected to acquire Any (Substantial) Monies to remotely meet the Costs Obligation of said "MERITORIOUS" APPEAL; henceforth, it is CRUCIAL that this HONORABLE COURT "FAVORABLY" consider the Instant Motions.
- F) Said Defendant will SUPPLEMENT said Instant Motion with an "AFFIDAVIT OF INDIGENCY/HARDSHIP"... for this HONORABLE COURT'S FAVORABLE consideration, should the same be required.
- G) Lastly, the "BEST INTERESTS OF JUSTICE; JUDICIAL EXPEDIENCY & JUDICIAL ECONOMY" warrant a GRANT of the Defendant's Aforementioned Motions... balancing the Constitutional Rights of the Defendant to Any and All Opposing Interests. Unknown at this time.

RESPECTFULLY SUBMITTED this 20 day of August, 2005.

ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

ATTORNEY KEITH AUSBORN - "DEFENDANT'S COUNSEL"  
D/B/A "LAW OFFICE OF ATTORNEY KEITH AUSBORN"  
1224 RYAN STREET  
MONTGOMERY, ALABAMA 36107  
(334) 264-9333 (WK.) & (334) 264-9339 (FAX)  
E-MAIL ADDRESS: KAILAWYER@KNOLOGY.NET

CERTIFICATE OF SERVICE

I, ATTORNEY KEITH AUSBORN, hereby certify that I have SERVED a copy of the foregoing upon the HON. LANE W. MANN; HON. TROY R. KING; HON. BENJAMIN C. REEVES; HON. KELLI MILLS & MR. DAVID DONNIE WILLIAMS, on this the 20 day of August, 2005, all via "U. S. MAIL - REGULAR DELIVERY/FACSIMILE; BOX DELIVERY; U. S. MAIL - REGULAR DELIVERY; U. S. MAIL - REGULAR DELIVERY & U. S. MAIL - REGULAR DELIVERY", at their Last Known Addresses.

ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)



IN THE CIRCUIT COURT FOR  
BULLOCK COUNTY, ALABAMA  
CRIMINAL DIVISION

FILED IN OFFICE

FEB 24 2005

STATE OF ALABAMA,

PLAINTIFF,

VS.

DAVID DONNIE WILLIAMS,

DEFENDANT.

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CLERK: REGISTER, BULLOCK CO., ALA.

\* CASE NO.: CC-2004-144-L.B.S.

DEFENDANT'S COUNSEL'S MOTION TO WITHDRAW &  
DEFENDANT'S COUNSEL'S MOTION FOR APPOINTMENT OF  
APPOINTED COUNSEL FOR APPELLATE PROCEEDINGS

COMES NOW the Defendant, DAVID DONNIE WILLIAMS, via Counsel of Record, ATTORNEY KEITH AUSBORN, and hereby submit to this HONORABLE COURT said "DEFENDANT'S COUNSEL'S MOTION TO WITHDRAW & DEFENDANT'S COUNSEL'S MOTION FOR APPOINTMENT OF APPOINTED COUNSEL FOR APPELLATE PROCEEDINGS", for the reasons succinctly articulated below:

- A) Said Defendant has a "MERITORIOUS" APPEAL that He desperately desires to Prosecute before THE HONORABLE ALABAMA COURT OF CRIMINAL APPEALS.
- B) Unless this HONORABLE COURT GRANTS said Defendant "APPOINTED APPELLATE COUNSEL", said Defendant will be financially unable to Prosecute said "MERITORIOUS" APPEAL.
- C) Said Defendant and Family are WITHOUT Additional Funds to pay to THE UNDERSIGNED COUNSEL for "APPELLATE REPRESENTATION" Before THE HONORABLE ALABAMA COURT OF CRIMINAL APPEALS.
- D) The Defendant's Mother, Sisters & Other Family Members have represented To the Defendant's Counsel that they have gone into SUBSTANTIAL "DEBT" exhausting their Surplus, and borrowing Monies to pay Attorney Fees for the Trial - Level Defense; of which the Undersigned Counsel Handled the Post - Judgment Motions Representation "PRO BONO". Accordingly, they further represent that they do NOT anticipate coming into Any Additional Funds to allocate for the "APPELLATE REPRESENTATION", with Additional Attempts...being deemed an



**"EXERCISE IN FUTILITY".**

- E) Said Defendant is both **"INCARCERATED & INDIGENT"**, and **NOT** realistically expected to acquire Any (Substantial) Monies to remotely meet the Costs Obligation of said **"MERITORIOUS" APPEAL**; henceforth, it is **CRUCIAL** that this **HONORABLE COURT "FAVORABLY"** consider the Instant Motions.
- F) Said Defendant will **SUPPLEMENT** said Instant Motion with an **"AFFIDAVIT OF INDIGENCY/HARDSHIP"**... for this **HONORABLE COURT'S FAVORABLE** consideration; should the same be required.
- G) Lastly, the **"BEST INTERESTS OF JUSTICE; JUDICIAL EXPEDIENCY & JUDICIAL ECONOMY"** warrant a **GRANT** of the Defendant's Aforementioned Motions... balancing the Constitutional Rights of the Defendant to Any and All Opposing Interests... Unknown at this time.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of August, 2005.

ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

ATTORNEY KEITH AUSBORN - "DEFENDANT'S COUNSEL"  
D/B/A "LAW OFFICE OF ATTORNEY KEITH AUSBORN"  
1224 RYAN STREET  
MONTGOMERY, ALABAMA 36107  
(334) 264-9333 (WK.) & (334) 264-9339 (FAX)  
E-MAIL ADDRESS: KAILAWYER@KNOLOGY.NET

**CERTIFICATE OF SERVICE**

I, ATTORNEY KEITH AUSBORN, hereby certify that I have **SERVED** a copy of the foregoing upon the **HON. LANE W. MANN; HON. TROY R. KING; HON. BENJAMIN C. REEVES; HON. KELLI MILLS & MR. DAVID DONNIE WILLIAMS**, on this the 22<sup>nd</sup> day of August, 2005, all via **"U. S. MAIL - REGULAR DELIVERY/FACSIMILE; BOX DELIVERY; U. S. MAIL - REGULAR DELIVERY; U. S. MAIL - REGULAR DELIVERY & U. S. MAIL - REGULAR DELIVERY"**, at their Last Known Addresses.

ATTORNEY KEITH AUSBORN  
DEFENDANT'S COUNSEL (AUS010)

IN THE CIRCUIT COURT FOR  
BULLOCK COUNTY, ALABAMA  
CRIMINAL DIVISION

STATE OF ALABAMA,

PLAINTIFF,

VS.

DAVID DONNIE WILLIAMS,

DEFENDANT.

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\* CASE NO.: CC-2004-144-L.B.S.

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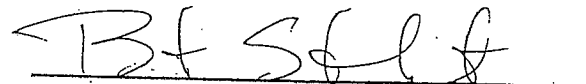
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ORDER

The above styled cause having come before this HONORABLE COURT on the "DEFENDANT'S COUNSEL'S MOTION TO WITHDRAW", and this HONORABLE COURT having carefully read and considered the same, and for "GOOD CAUSE" shown, it is hereby ORDERED that said MOTION is due to be and hereby is GRANTED.

Finally, also for "GOOD CAUSE" shown, said "DEFENDANT'S MOTION FOR APPOINTED COUNSEL" is due to be, and hereby is GRANTED, with it being further ORDERED that ATTORNEY GENE SPENCER is hereby Appointed to Legally Represent the Defendant's Legal Interests in All Appellate Proceedings.

DONE this the 2<sup>nd</sup> day of MARCH, 2005.



HON. L. BERNARD SMITHART  
CIRCUIT JUDGE

C: HON. BENJAMIN C. REEVES - "BULLOCK COUNTY D. A.";  
HON. LANE W. MANN - "CLERK - A.C.O.C.A.";  
HON. TROY R. KING - "STATE ATTORNEY GENERAL";  
HON. KELLI MILLS - "CERTIFIED COURT REPORTER";  
ATTY. GENE SPENCER - "DEFENDANT'S APPELLATE COUNSEL"  
ATTY. KEITH AUSBORN - "DEFENDANT'S TRIAL COUNSEL"

&

MR. DAVID DONNIE WILLIAMS - "DEFENDANT/APPELLANT"

A.I.S.#: 169189; G2C - 230

1000 ST. CLAIR ROAD

SPRINGVILLE, ALABAMA 35146 - 5582

64

CERTIFICATE OF COMPLETION AND  
TRANSMITTAL OF RECORD ON APPEAL  
-BY TRIAL CLERK

DavidDDonniewWilliams

APPELLANT

v.

State Of Alabama

APPELLEE

TO: The Clerk Of the Court of  
Criminal Appeals of Alabama

CASE NO.: CC 2004-144

DATE OF NOTICE OF APPEAL: 1-31-05

I certify that I have this date completed and transmitted herewith to the appellate court the record on appeal by assembling in (3 volumes of 200 pages each and one volume of 25 pages) the clerk's record and the reporter's transcript and that one copy each of the record on appeal has been served on the defendant and the Attorney General of the State of Alabama for the preparation of briefs.

I certify that a copy of this certificate has this date been served on counsel for each party the appeal.

DATED this 1st day of July, ~~XX~~ 2005.

Wilbert M. Jernigan  
Circuit Clerk

Bullock  
County

AP 12-3 Letter of Transmittal of Notice of Appeal to the Court of Criminal Appeals by Trial Clerk Printed and For Sale by Roberts &amp; Son, Birmingham

**LETTER OF TRANSMITTAL OF NOTICE OF APPEAL TO  
THE COURT OF CRIMINAL APPEALS BY  
TRIAL CLERK**

David Donnie Williams

Appellant

V.

STATE OF ALABAMA  
AppelleeOffense StalkingSentence 38 YearsNotice of Appeal 1-31-05

Date Filed

Judgement Entry 12-09-04

Date Entered

- [ ] Oral notice of appeal has been given prior to or on the date of entry of the judgment of conviction in this cause,
- [ X ] Written notice of appeal has been filed on the date indicated hereon (within 42 days from the entry of judgment or the order overruling a post conviction motion),

A certified copy of the entry of record of the oral notice of appeal or the written notice of appeal is forwarded herewith for filing with the Court of Criminal Appeals.

I certify that I have served a copy of this letter of transmittal along with a copy of the notice of appeal on each of the following:

1. Court Reporter (Name and address) \_\_\_\_\_
2. Defendant \_\_\_\_\_
3. Defendant's appellate counsel. (Name and address) \_\_\_\_\_
4. District Attorney \_\_\_\_\_
5. Attorney General \_\_\_\_\_

DATED this 1st day of July 2005

*Wilbert M. Gernigan*  
Circuit Clerk

IN THE THIRD JUDICIAL CIRCUIT  
IN AND FOR BULLOCK COUNTY, ALABAMA

STATE OF ALABAMA,  
Plaintiff,

Vs. Circuit Court Criminal  
Action Nos. CC-2004-144 & 145

DAVID DONNIE WILLIAMS,  
Defendant.

\* \* \* \* \*  
REPORTER'S OFFICIAL TRANSCRIPT ON APPEAL  
\* \* \* \* \*

Criminal Trial Proceedings taken in the  
above-styled cause in the Bullock County Courthouse,  
Union Springs, Alabama, on November 22, 2004 and  
December 9, 2004, before the Honorable Burt Smithart.

APPEARANCES

ON BEHALF OF THE STATE:  
Carmella Penn,  
Assistant District Attorney

ON BEHALF OF THE DEFENDANT:  
Keith Ausborn,  
Attorney at Law

OFFICIAL COURT REPORTER  
Kelli Wise Mills  
408 N. Prairie Street  
Union Springs, Alabama 36089  
(334) 738-3284

**COPY**

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ROBERT E. EDWARDS

DX by Mr. Ausborn . . . . .	.420
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LYNN JONES

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JENNY RENFROE

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1 (On November 16, 2004, a jury venire was  
2 brought in, duly sworn and qualified, from  
3 which a jury was struck, seated in the jury  
4 box without objection from either counsel,  
5 given a recess instruction by the Court and  
6 released until November 22, 2004.)

7 (The following proceedings were held  
8 November 22, 2004, in open court outside  
9 the presence of the jury:)

10 (Defendant present with counsel.)

11 MOTIONS

12 THE COURT: Kelli, this is Case Number  
13 CC-2004-144 and 145, State versus David Donnie  
14 Williams.

15 Mr. Williams is present represented by Keith  
16 Ausborn and the State by Carmella Penn.

17 The State has filed a notice of intent to  
18 present 404(b) evidence related to the prior  
19 convictions that are listed in the motion.

20 The defense has asked for oral arguments with  
21 regard to this motion.

22 MRS. PENN: Your Honor, it was my intent that  
23 the first three prior convictions, as well as the  
24 two that I'm about to argue, will be offered in a  
25 motion to enhance upon conviction.

1           Numbers 4 and 5 and an Escape Second,  
2           CC-2001-10 and CC-2001-104, these prior convictions  
3           involve the current victim in this case. This is a  
4           domestic violence/harassment charge and a stalking  
5           charge that we are currently here on today.

6           This is an ongoing crime, the stalking is. And  
7           in 2001, the defendant was convicted on charges  
8           where Callie Williams was the victim as well.

9           There were two assault charges brought with  
10          that. He was charged with burglary. He broke  
11          in to the house and stole property from her and her  
12          daughter and assaulted both of them taking both of  
13          them away from their home, assaulting both of them.

14          I think as a part of the plea arrangement, the  
15          assault charges were pled away, but he was  
16          convicted of theft of property. He stole property  
17          from her and her daughter in that particular case.

18          And the escape case is once he was arrested, he  
19          escaped. And those would be the charges that the  
20          State would be asking to present at trial.

21          THE COURT: So you are wanting to present the  
22          Theft of Property Second and the Escape Second as  
23          part of the full charges that were brought  
24          originally? Those are the only two he pled to, but  
25          there were other charges brought that involved the

1 same victim that were not processed in a plea bargain  
2 in your office.

3 Any law on that?

4 MRS. PENN: Just the prior bad acts and the  
5 fact that he was convicted.

6 MR. AUSBORN: Your Honor, we would strenuously  
7 object to this 404 motion.

8 We oppose it in that the constitution,  
9 statutorily speaking, the State cannot offer prior  
10 bad acts as proof and conformity to charges that  
11 are totally irrelevant to what he is charged with  
12 in the two other indictments.

13 As the Court is very aware, a defendant is  
14 cloaked with the legal presumption of innocence  
15 until and unless proven guilty beyond a reasonable  
16 doubt.

17 The fact that these cases were plea bargained  
18 down is indicative that the State did not pierce  
19 that legal cloak and presumption.

20 The charges of burglary and escape are  
21 irrelevant offenses as it relates to the two  
22 offenses which he is charged today.

23 The precarious position that this would place  
24 us in, if the Court were to grant this motion by  
25 the State, is that it would necessarily force my

1 client to surrender his constitutional right to  
2 remain silent in this case because he would  
3 absolutely have to take the stand in order to  
4 defend against the contentions made for by the  
5 victim as relates to those old charges.

6 Unquestionably, if he did not take the  
7 stand -- Unquestionably, we are talking about  
8 highly prejudicial evidence that would come forth  
9 that obviously would divest him to his  
10 constitutional right to a fair trial in this case.

11 THE COURT: As to Theft of Property and Escape,  
12 those are out. The motion to suppress is granted  
13 concerning those.

14 However, prior acts of domestic violence  
15 concerning this victim whether nol prossed or not  
16 can be brought in through the testimony of the  
17 victim.

18 She can talk about what complaint she signed  
19 and what the ultimate disposal was, but I want her  
20 instructed not to talk about Mr. Williams' other  
21 charges. Those cases were nol prossed.

22 MR. AUSBORN: Your Honor, I would ask that the  
23 Court give a detailed and limiting instruction to  
24 this jury that those were allegations that the  
25 state contended that my client committed; however,



1 he was not found guilty of those particular  
2 allegations. Because if the Court doesn't give a  
3 limiting instruction, he, again, necessarily is  
4 still going to have to take the stand in order to  
5 aggressively oppose.

6 THE COURT: I'll look and see how it goes. If  
7 he doesn't testify, the prior conviction isn't  
8 going to come in. If he does, they can cross him.

9 MR. AUSBORN: What was that, now, Your Honor?

10 THE COURT: I am saying where this Theft of  
11 Property Second and Escape was plea bargained down,  
12 if Mrs. Penn questions him and he says, yes, and  
13 describes those without going into conviction, and  
14 you decide to cross, then I would probably let  
15 Mrs. Penn bring back the total circumstances and  
16 all.

17 Do you see what I'm saying?

18 MR. AUSBORN: I necessarily have to cross.  
19 Because if I don't challenge that, then the jury  
20 takes the position --

21 THE COURT: I want your cross limited to those  
22 cases didn't go forward and they were dismissed and  
23 not proessed by the State.

24 And if we leave it at that point, I think  
25 that's the fairest way to doll it.

1 MRS. PENN: Judge, as to the original motion I  
2 argued those second two, but there are other  
3 charges, and those are not going -- we are not  
4 arguing them for the proof of the matter asserted.

5 THE COURT: I don't understand.

6 MRS. PENN: Your Honor, basically he is a  
7 criminal, and he has the propensity to commit  
8 crimes; and, Your Honor, basically, I believe, why  
9 the district attorney filed that motion in the  
10 case.

11 THE COURT: That's what I am saying. I am  
12 taking it off for you.

13 MRS. PENN: That's what I'm saying. I wanted  
14 to make sure that I didn't take it off.

15 I think it is proper for sentencing. I think  
16 404 and 403 read together.

17 You have something more than what you've got?

18 MR. AUSBORN: Your Honor, the other thing I've  
19 got is I know the State has orally moved and  
20 noticed the defendant of their intent to sentence  
21 this defendant --

22 THE COURT: Orally or in writing?

23 MR. AUSBORN: That's my argument. That does  
24 not negate their responsibility to put it in  
25 writing.

1 MRS. PENN: I could have faxed it to him, but  
2 he had his phone transferred.

3 THE COURT: What's the plea offer? Was it in  
4 the plea offer?

5 MRS. PENN: We had all of the priors.

6 THE COURT: All right.

7 MR. AUSBORN: Your Honor, what are the  
8 parameters on opening? I suspect that it will be a  
9 pretty quick trial.

10 THE COURT: I usually don't put any on  
11 openings.

12 Anything else?

13 MR. AUSBORN: No, sir.

14 THE COURT: Bring them in, Smitty.

15 (Whereupon a Bench conference was held outside  
16 the hearing of the reporter.)

17 THE COURT: Are you invoking the Rule?

18 MRS. PENN: Yes, Your Honor.

19 (Whereupon the Rule was invoked and all  
20 potential witnesses left the courtroom.)

21 (Whereupon the jury was seated in the jury  
22 box, and the following proceedings were had in  
23 open court within the presence and hearing of  
24 the jury:)

25 THE COURT: Good morning. Is everybody

1 comfortable? As comfortable as you can be in those  
2 seats with no lights.

3 By way of reminder, this is Case Number  
4 CC-04-144 and 145, State of Alabama versus David  
5 Donnie Williams.

6 Just as a reminder, I am Judge Smithart. This  
7 is Carmella Penn with the district attorney's  
8 office, the victim Callie Williams. The defense  
9 attorney Mr. Keith Ausborn, and the defendant David  
10 Donnie Williams.

11 When we struck the jury the other day, I read  
12 to you the indictments. One was for Stalking and  
13 one was for Domestic Violence Third.

14 As I told you then, the indictments are just  
15 the formal way charges are brought against  
16 somebody. The State has the burden of proof and  
17 that burden never shifts. That burden is beyond a  
18 reasonable doubt. This is a criminal trial.

19 I need for each of you to raise your right hand  
20 and to be sworn in as the jury to try the case of  
21 State of Alabama versus David Donnie Williams.

22 (Whereupon the jury was sworn.)

23 COURT'S OPENING REMARKS

24 THE COURT: Ladies and gentlemen, before we  
25 broke after the jury striking, I gave you what was

1 called a recess instruction, where I talked to you  
2 about your conduct as jurors and about the Court  
3 order concerning not talking about the case or  
4 letting the case be talked about in front of you or  
5 doing any kind of research or experiments on the  
6 case or looking up any law or visiting the scene of  
7 any occurrence.

8 Do y'all remember that instruction?

9 (Affirmative response from the jury.)

10 THE COURT: I'll ask you periodically  
11 throughout this trial if you found out anything  
12 about this case other than the arguments of the  
13 lawyers and the testimony. And before women start,  
14 I need to ask that question:

15 Have any members of the jury had any kind of  
16 contact or conversation concerning this case that  
17 needs to be reported to the Court?

18 (Negative response from the jury.)

19 THE COURT: I'll renew that instruction. And  
20 it applies to your service throughout this trial.

21 Don't discuss the case even amongst yourselves  
22 because that wouldn't be fair to both sides.

23 I want you to wait and discuss the case after  
24 the close of the case. By close of the case, I'll  
25 tell you just briefly how that goes.

1           You will have the case presented by the State  
2           and then the defense, then you'll have closing  
3           arguments, and then you'll have an instruction  
4           given by me. And that instruction is the law that  
5           you are to apply to a certain case.

6           I'll give you the law that you need when  
7           deciding this case, and then you will go back and  
8           begin your deliberations. Then and only then will  
9           it be appropriate for you to discuss the case.

10          Does everybody understand?

11          (Affirmative response from the jury.)

12          THE COURT: With that is the State satisfied  
13          with just a brief reminder of a recess instruction  
14          from this point forward?

15          MRS. PENN: Satisfied.

16          THE COURT: Defense?

17          MR. AUSBORN: Satisfied.

18          THE COURT: Ladies and gentlemen of the jury,  
19          before proceeding with the trial of this case, it  
20          may be helpful for you to have an understanding of  
21          the rules of procedure that will be followed by you  
22          and by the Court in this case. When a judge and  
23          jury sit together in a court of law, it's the duty  
24          of the judge to see that the trial progresses in an  
25          orderly fashion, to rule upon the legal matters



1 that are presented and define the issues that are  
2 involved in the case, and then finally to instruct  
3 you as to the law that you're to apply to a  
4 particular case.

5 It's your duty as jurors to follow the law so  
6 stated to you by the judge. You will therefrom  
7 return a verdict in accordance with the facts as  
8 you determine them to be from the evidence and the  
9 law given to you by the Court.

10 This is a criminal case and the procedure will  
11 be as follows: First, counsel for the State will  
12 make an opening statement of their case. Counsel  
13 for the defense will then respond with a statement  
14 of their defense. Each side will be confined to an  
15 outline of what they expect the evidence to show.  
16 These statements are not evidence but are given to  
17 you to familiarize you with the case and to  
18 acquaint you with the contentions of each side from  
19 the beginning.

20 Following opening statements, evidence will be  
21 presented by witnesses and perhaps from exhibits.  
22 In receiving the evidence, you should bear in mind  
23 that as officers of the court, the attorneys have a  
24 duty to present the evidence on behalf of the  
25 parties they represent, to make such objections as

1           they deem proper, and to fully argue their party's  
2           cause.

3           An attorney's statements are not evidence but  
4           are given to you to help you understand the  
5           evidence and apply the law. Therefore, you should  
6           consider in your verdict only statements supported  
7           by the evidence and by the law given to you by the  
8           Court.

9           Likewise, statements made by the Court are not  
10          evidence, and they're not to be so considered by  
11          you as evidence.

12          During the trial, I'll be called upon to rule  
13          on objections as to the admissibility of testimony  
14          or other evidence. You must not concern yourself  
15          with the reason for my rulings since those are  
16          controlled and required by the rules of law.

17          You're not to speculate as to possible answers  
18          to questions which I do not require to be answered.  
19          Additionally, the overruling of an objection to  
20          evidence is not intended to indicate the weight to  
21          be given that evidence by you.

22          Occasionally during the trial, it will be  
23          necessary for me to confer with the attorneys  
24          outside of your presence. I may excuse you from  
25          the courtroom or we may whisper up here at the

1 Bench or we may go outside. You're not to consider  
2 these conferences in any way or let them in any way  
3 affect your verdict. That's not evidence. The  
4 evidence will come to you from witnesses and from  
5 exhibits. You should not speculate on the content  
6 of any of those conversations nor allow the  
7 conference or any inference you might draw affect  
8 your verdict in any way.

9 Following the close of the evidence, counsel  
10 will again address you in closing arguments. In  
11 these arguments, they will discuss the evidence and  
12 all the reasonable inferences to be drawn therefrom  
13 to help guide you to a true and just verdict.  
14 Counsel for the State will start, followed by the  
15 defense, and then again by the State because the  
16 State has the burden of proof.

17 You will be the sole and exclusive judges of  
18 the facts of this case. It will be your duty to  
19 attempt to reconcile all the testimony of all the  
20 witnesses so as to make them all speak the truth if  
21 that can be reasonably done. If you cannot  
22 reasonably reconcile all the testimony, it's then  
23 your duty to consider the testimony with a view of  
24 determining what the true facts are.

25 In doing so, you may accept or reject any part

1 of any testimony of any witness and accept only the  
2 testimony that you consider to be worthy of belief.

3 In determining what the true facts are from the  
4 testimony, you may take into consideration any  
5 natural interest or bias a witness may have as a  
6 result of their connection with the case. You may  
7 take into account any interest or bias a witness  
8 may show while testifying. You may take into  
9 consideration the demeanor of the witness as to  
10 whether that witness has apparently testified  
11 frankly or evasively. You may take into  
12 consideration any matter which you would use in  
13 your everyday affairs in deciding upon the  
14 truthfulness and accuracy of someone's testimony.

15 Weigh the testimony that you hear today in  
16 light of your common observations and everyday  
17 experiences and reach a verdict that will be based  
18 upon the truth as you determine it from all of the  
19 evidence.

20 In this case, your verdict must be unanimous.

21 With that is the State ready to proceed?

22 MRS. PENN: Ready, Your Honor.

23 THE COURT: Defense?

24 MR. AUSBORN: Ready, Your Honor.

25 THE COURT: Opening for the State.

OPENING STATEMENTS

(Whereupon Mrs. Penn presented her opening statements to the jury on behalf of the State, and no objections were made thereto.)

THE COURT: For the defense.

(Whereupon Mr. Ausborn presented his opening statements to the jury on behalf of the defendant, and no objections were made thereto.)

THE COURT: Call your first witness.

MRS. PENN: Callie Williams.

**CALLIE M. WILLIAMS**

having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MRS. PENN:

Q. State your name for the ladies and gentlemen of the jury, please.

A. Callie M. Williams.

Q. Mrs. Williams, where do you reside?

A. 1010 MLK Boulevard, Lot 2, Union Springs, Alabama, 36089.

Q. Do you know Donnie Williams?

A. Yes, I do.

Q. Where do you work?

1 A. Wayne Farms.

2 Q. How long have you been working at Wayne Farms?

3 A. Almost seven years.

4 Q. And how did you come to know Mr. Williams?

5 A. I was sitting on my step one day, June of '97, and  
6 he was passing by with his nephew in a white  
7 Explorer, and he said, hey, how you doing. I said,  
8 I'm doing fine. And he said, I'll be back to  
9 holler at you; and I said, okay. And the next day  
10 he came up there and we had conversation about  
11 getting together and everything.

12 Q. And you began a relationship at that point?

13 A. Yes.

14 Q. And so you had been dating Mr. Williams since '97  
15 up until what time?

16 A. Yes, off and on. Yes. We have broken up and went  
17 back together.

18 Q. Up until what time?

19 A. We have dated several times. I can't remember all  
20 of the dates in the year.

21 Q. When was the last time?

22 A. This year, March the 24th -- I mean march 19th when  
23 I broke up with him.

24 Q. And you said you had broken up off and on several  
25 times throughout the years.



1 Any particular reason you broke it off and went  
2 back and broke it off and went back?

3 A. He kept talking about he was going to change and do  
4 this for me and do that for me. And he said he  
5 didn't want to see me with anybody else. That's  
6 what he was telling me.

7 Q. When he said he was going to change, what did he  
8 mean?

9 A. I thought he was going change. I thought he was  
10 for real.

11 Q. Do you know what he was saying he was going to  
12 change? What was it?

13 A. He was on crack. He was on drugs real bad, and he  
14 told me he was going to leave drugs alone.

15 Q. Let's go to March 19th. You broke up on March  
16 19th.

17 Were you at home? Tell me about that date and  
18 how you broke up with Donnie.

19 A. We were off at Wayne Farm on March 19th. We got  
20 paid on March 18th. He got paid and he offered to  
21 give me some money. And I got off the (inaudible)  
22 and he was standing outside with another friend of  
23 his, and he offered me \$60. And he said, Callie,  
24 I'll be back in 20 minutes. And time went to going  
25 and going and he gave me some money to hold for

1 him, and I said, Donnie, don't take the money to  
2 throw it all away; you need to save the \$120. And  
3 then he left and came back again and asked for  
4 \$120. And I stated, don't go and throw it away  
5 because you promised to give me some money every  
6 week. And then he said, I'll be back in a few  
7 minutes. And time went to going and going and  
8 going, and about 6:30 that morning, I called my  
9 daughter and said, will you please come pick him up  
10 (sic). And at that time, he grabbed my cellular  
11 phone too. On March 18th, he grabbed my cellular.

12 THE COURT: Slow down and speak up,  
13 Ms. Williams. The court reporter can't understand  
14 you.

15 Q. Okay. Before we stopped, you called your daughter,  
16 what happened as a result of that phone call to  
17 your daughter at 6:30 in the morning?

18 A. I told Lakeisha would she come pick me up because I  
19 had a feeling something was going to happen. And  
20 it was about 6:40, and I left, and she had never  
21 showed up. And I went on to my daughter's house to  
22 lay down and go to sleep. And then later on that  
23 afternoon, we went over there to pick the kids up  
24 when they get off the bus. And finally his  
25 brother-in-law brought him over to my house, and I

1 told him to give me my cellular phone; I don't want  
2 you no more because you have gotten back on that  
3 crack. And I went on in the house, and he came  
4 back knocking on the door. And I said, Donnie, go  
5 on; I don't want you anymore. And he said, what  
6 you doing over here -- (unintelligible).

7 And I took him over to the house, and I  
8 wouldn't go in the house. I was afraid of this man  
9 because he was full of crack. And he said, Callie,  
10 come do something to me. And I got in the car and  
11 went to the high school looking for my son. And I  
12 picked him up looking for him at my house.

13 And Donnie came over again behind me all day  
14 the 19th. And he was constantly behind me and then  
15 later on that night about 9:00, he came back again.  
16 And I said, Donnie, go on and leave me alone. And  
17 I went on and was talking to my daughter and  
18 friends that was in the house with her. And then  
19 he came back again. And he wouldn't leave me alone  
20 and I had left my house. He was constantly coming  
21 back.

22 Q. This was on the 19th?

23 A. Yes.

24 Q. How many times did he come to your daughter's house  
25 that evening?

1 A. Several times. I can't remember; five or six  
2 times.

3 Q. Did you ever go home on the 19th?

4 A. I went over there to pick my daughter off the bus,  
5 but I wouldn't go in the house because he was full  
6 of that crack.

7 Q. Was he in the car with you off and on?

8 A. Yes.

9 Q. I don't know if the jury --

10 He was in the car with you?

11 A. Yeah, he had asked me.

12 Q. Hold up. Let me ask a question and then you just  
13 answer it. That will help the court reporter out.

14 You took him to your house, but you didn't get  
15 out of the car; correct?

16 A. Yeah, because I was afraid.

17 Q. You picked your daughter up?

18 A. Yes.

19 Q. And then I believe you said you went to the high  
20 school to get your son?

21 A. Yes.

22 Q. Where did you go when you left there? And just  
23 answer the question I'm asking you.

24 A. When I went to pick up my son, I came back by the  
25 house and he wanted me to take him back out there.

1 Q. You went back to your house?

2 A. Yes.

3 Q. And was Donnie there?

4 A. Yes.

5 Q. And you took him somewhere?

6 A. Yes.

7 Q. Where did you take him to?

8 A. It was out there -- he told me to take him out to  
9 (inaudible) Trailer Park. This girl he was  
10 supposed to get some (unintelligible) from, she was  
11 from up north somewhere.

12 Q. Did you take him to Hendley?

13 A. Yes, I did.

14 Q. Did you wait on him?

15 A. He never got out of the car. He said that was the  
16 wrong place. I said that's where you told me to  
17 go.

18 Q. Where did you take him after that?

19 A. He told me to go up -- I haven't been up the road  
20 in years he wanted me to go back in. He wanted me  
21 to go up in one of those roads to take me up a back  
22 dirt road so he could kill me. I knew that was  
23 what he was trying to do.

24 Q. Let's do the question/answer thing. You went to  
25 Hendley's?

- 1 A. Yes.
- 2 Q. And he said this is not where I want to be?
- 3 A. Yes.
- 4 Q. And then he directed you to another road?
- 5 A. Yes.
- 6 Q. And then did he tell you any specific place to go
- 7 on that road?
- 8 A. No.
- 9 Q. You went on the road?
- 10 A. No, I didn't go.
- 11 Q. You did not go. Where did you go? Just answer the
- 12 question where did you go when he asked you to take
- 13 him down that road? Where did you go?
- 14 A. I went back and put Donnie out at my house.
- 15 Q. Where did you go after you put him out?
- 16 A. Went back to my daughter's house.
- 17 Q. Did you see him anymore that day?
- 18 A. Yes, I did.
- 19 Q. Where did you see him?
- 20 A. He came back over to my daughter's house.
- 21 Q. What was he doing at your daughter's house?
- 22 A. Trying to make me come back home.
- 23 Q. And did he come in to your daughter's house?
- 24 A. Yes, he did.
- 25 Q. And he was asking you to come home?



1 A. Yes.

2 Q. And did you go home with him?

3 A. No, I did not.

4 Q. How long did he stay on that particular instance?

5 A. He didn't stay there long.

6 Q. Did you see him anymore after he left that time,  
7 that night?

8 A. Yes, he came back again.

9 Q. How many times did he come back on the night of the  
10 19th?

11 A. He came several times. I can't remember how many  
12 times.

13 Q. And each time you would tell him that you weren't  
14 going?

15 A. Yes.

16 Q. So, do you know about what time the last time he  
17 came out there was?

18 A. No.

19 Q. Were you working at Wayne Farms at the time?

20 A. We was off that day.

21 Q. On the 19th you were off?

22 A. Yeah, everybody was off.

23 Q. Now, we got the 19th in, and we are out of the way  
24 with that.

25 When is the next time you saw David Donnie

1 Williams?

2 A. It was on March the 20th. I would say after we had  
3 got off -- I would say between 12:30, 1:00 it was  
4 really the 24th, March 24th.

5 Q. Are we talking about 12:30 a.m.?

6 A. Yes.

7 Q. You were at work?

8 A. Yes.

9 Q. Did you see Donnie at work?

10 A. Yes, I did.

11 Q. Did you-all work the same shift?

12 A. But he didn't come to work that day.

13 Q. He did not come on the 24th?

14 A. As I can remember. When I got in the breakroom, at  
15 first I didn't see him.

16 Q. But you saw him at work?

17 A. Yeah, I saw him at work. But I don't know where he  
18 came from.

19 Q. You saw him at work in the breakroom?

20 A. Yes. He came up to me.

21 Q. And was there any confrontation at that time?

22 A. Yes.

23 Q. Were you arguing or anything?

24 A. I'm fixing to tell you what he told me.

25 Q. I know you want to tell me everything, but answer

1 exactly what I'm asking you.

2 Was there any argument about anything at that  
3 time?

4 A. Yes.

5 Q. What were you arguing about?

6 A. He said, bitch, you don't know; I'll hurt you. He  
7 grabbed me in my back by my sweatshirt and said,  
8 bitch, you don't know; I'll hurt you. I don't like  
9 what you did. And then he grabbed my cellular  
10 phone, and I was talking to my lady friend, and I  
11 walked away from him. And he told me, I'm going  
12 make you lose your job.

13 Q. Let's back up. You said he called you a name and  
14 said, I don't like what you did to me?

15 A. Yes.

16 Q. Do you know what he was referring to?

17 A. I believe it was because I had called his parole  
18 officer.

19 MR. AUSBORN: Objection, Your Honor.

20 THE COURT: Sustained. Strike the last  
21 response.

22 Q. And after the incident in the breakroom, you went  
23 back to work or were you off for the day?

24 A. I was pulling my supplies.

25 Q. Were you off of work or had you gotten off?

1 A. I was getting ready to go to work.

2 Q. You had just gotten there?

3 A. Yes.

4 Q. And did you see him anymore during the day at work  
5 on the 24th?

6 A. Yes, I did.

7 Q. And did you have any other confrontations with him  
8 on the 24th at work?

9 A. Yes.

10 Q. How many more?

11 A. It was two.

12 Q. Two other than once in the breakroom?

13 A. Yes.

14 Q. Where did he confront you at the second time?

15 You've gone to work now. We've gone in the  
16 breakroom. What happened the second time?

17 A. When I got on the floor, I told my supervisor  
18 Anthony. I said, Anthony, can I go to the office  
19 for a minute. I don't want to lose my job. And I  
20 was trying to find the plant manager on second  
21 shift. And the second shift supervisor saw Donnie  
22 pulling on my smock. And I said, Donnie, go and  
23 leave me alone. Leave me alone.

24 MR. AUSBORN: I object to any hearsay, Your  
25 Honor.

1 THE COURT: Mrs. William, the jury can't  
2 understand what you are saying because you are  
3 going to fast and talking to low.

4 THE WITNESS: Okay.

5 Q. We are back to the second time.

6 Did you make it to the office or did you meet  
7 Donnie on the way to the office?

8 A. He was coming behind me. That's the time he was  
9 pulling on my smock.

10 Q. And that's what the supervisor saw?

11 A. The supervisor saw him pulling on my smock.

12 Q. And the supervisor stopped him or you stopped him?

13 A. No. The supervisor stopped me. And she asked me  
14 what was wrong --

15 MR. AUSBORN: I object, Your Honor; hearsay.

16 THE COURT: Sustained.

17 Q. Now, did you eventually go on to the office?

18 A. At that time I was trying to find Lonzie.

19 Q. That's the plant manager?

20 A. Yes, on second shift.

21 Q. Did you find Lonzie?

22 A. We had to walk away before we found him, not right  
23 then.

24 Q. But you did find Lonzie?

25 A. Yes.

1 Q. What did you do when you found Lonzie?

2 A. I told him I needed to talk to him about something.

3 Q. And you talked to him?

4 A. Yes.

5 Q. And what was the result of your conversation with  
6 Lonzie?

7 A. He told me to tell him what happened at that time.

8 THE COURT: You can't tell what somebody else  
9 says to you, okay.

10 Q. You told Lonzie what happened?

11 A. Yes.

12 Q. Don't tell me what Lonzie said to you. But what  
13 did Lonzie do? I don't want to know what he said.  
14 I just want to know what he did.

15 A. He told Donnie --

16 Q. Did he talk to Donnie?

17 A. Yes, he talked to him.

18 Q. Did he make any written complaint?

19 A. At my remembrance, I don't know.

20 Q. So you didn't see him make any written complaint?

21 A. I don't know.

22 Q. But he did talk to Donnie Williams?

23 A. Yes.

24 Q. Did you go back to work then or was there something  
25 else you had to do?



1 A. Yeah, I went back to work.

2 Q. And that was the second time we talked about on the  
3 24th?

4 A. Yes.

5 Q. And there was another confrontation with Donnie on  
6 the 24th at your job?

7 A. Yes.

8 Q. Tell me about when was that.

9 A. It was about 10:00. We were going back after  
10 lunch.

11 Q. Going back at about 10:00?

12 A. He was going on back after break -- (inaudible).

13 Q. Speak up and slow down.

14 You saw him coming behind you doing what?

15 A. Coming behind me. And then he said, I went and  
16 told your mama what you did. And I said, leave me  
17 alone, Donnie; leave me alone. And I kept walking.  
18 And then Lonzie had said --

19 Q. Don't tell me what Lonzie said. Just tell me what  
20 you did or what Donnie did.

21 Did he follow you to the line?

22 A. No, he didn't follow me to the line.

23 Q. When you got back to the line, did you notify  
24 anybody that he had come to confront you again?

25 A. Yes, I did.

1 Q. Who did you notify?

2 A. It was a supervisor.

3 Q. Did that supervisor do something -- I don't want to  
4 know what they said. But did they do something in  
5 reference to notifying them about David harassing  
6 you?

7 A. Yeah, she went to get Lonzie for me.

8 Q. And did Lonzie come over to the line?

9 A. Yes, he came to the area I worked at.

10 Q. Did you talk to Lonzie?

11 A. Yes, I did.

12 Q. Do you know what Lonzie did after you talked to  
13 Lonzie?

14 A. I don't know what he did after I talked to him.

15 Q. He just walked away?

16 A. Yes, he walked away.

17 Q. And when you talked to him, what did you say?

18 A. I told him that Donnie came back in my face after  
19 lunch. And he said, I told him don't come back  
20 around you on your job.

21 Q. And he leaves after that, and you don't know what  
22 happened after that?

23 A. No, I don't.

24 Q. And that's three times on the 24th at work; is that  
25 right?

1 A. Yes.

2 Q. What time do you get off?

3 A. We get off at different times every night. I can't  
4 remember what time we got off.

5 Q. So you didn't see him anymore that night while at  
6 work?

7 A. Not at work.

8 Q. Did you see him anymore after you got off work that  
9 night?

10 A. No.

11 Q. How did you get home that night?

12 A. My daughter came and picked me up.

13 Q. What happened after she came and picked you up?  
14 Where did you go?

15 A. I went to her apartment.

16 Q. And did you see him anymore that night?

17 A. He came over there knocking on her door.

18 Q. On the 24th?

19 A. Yes.

20 Q. He came to your daughter's apartment and knocked on  
21 the door?

22 A. Yes.

23 Q. And did you open the door for him?

24 A. No, I didn't open it. Didn't nobody open the door.

25 Q. How many times did he come out to the apartment

1           that night?

2       A.     That was the last time he came that night.

3       Q.     That was the last time he came.

4           When was the next time you saw David Donnie  
5       Williams after the 24th?

6       A.     It was on the 26th. He came over to my daughter's  
7       apartment.

8       Q.     So two days later he comes back to your daughter's  
9       apartment. Were you there?

10      A.     Yes, I was there. But didn't nobody open the door.

11      Q.     Did he knock?

12      A.     Yes, he knocked.

13      Q.     And you didn't say anything?

14      A.     I didn't say anything.

15      Q.     And he went away?

16      A.     Yes, he went away.

17      Q.     Did you see him anymore on the 26th?

18      A.     No, I didn't.

19      Q.     When was the next time after the 26th when you  
20       didn't open the door for him that you saw him  
21       again?

22      A.     On the 27th.

23      Q.     This is the very next day?

24      A.     Yes.

25      Q.     And where did you see him on the 27th?

- 1 A. He was in my house.
- 2 Q. At your house or in your house?
- 3 A. He was in my house.
- 4 Q. He was in your house on the 27th. Where were you?
- 5 A. I had pulled up to get me and my children some
- 6 change of clothes to put on, and I saw him, saw the
- 7 car in my yard. And I said, he was trespassed away
- 8 from my house.
- 9 Q. When did you trespass him away from the property?
- 10 A. The first trespass warrant I did was on March 24th.
- 11 Q. Three days earlier?
- 12 A. Yes.
- 13 Q. And when had you done that?
- 14 A. It was around about -- I don't know the exact time
- 15 I did.
- 16 Q. Morning or night?
- 17 A. It was sometimes during that day.
- 18 Q. It was before you went to work?
- 19 A. Before I went to work.
- 20 Q. You had signed a trespass warrant before you went
- 21 to work?
- 22 A. Yes.
- 23 Q. And where did you sign that at?
- 24 A. Mr. Wilbert Jernigan's office.
- 25 Q. Now, let's go back to the 27th. He was at your

1 house?

2 A. Yes.

3 Q. And did you go in your house?

4 A. Not at that time until the police got there because  
5 I was afraid.

6 Q. Did you call the police?

7 A. Yes, I did.

8 Q. And what happened when the police got there? Was  
9 Donnie still there?

10 A. He was in there asleep.

11 Q. He was in there asleep?

12 A. Yes.

13 Q. And when you did the trespass warrant, did you do  
14 it away from you or away from your house or how did  
15 you do that? Do you know?

16 A. I wanted to do it away from my house.

17 Q. So he was in your house?

18 A. Yes.

19 Q. And when the police got there, what happened?

20 A. I told them one go to the front and one go to the  
21 back. He might wake up and run. And then I don't  
22 know this officer's name, but he went to the door  
23 and knocked; Donnie, Donnie, and the man went in  
24 the house and said, she don't want you in her  
25 house.

1 MR. AUSBORN: Object. Move to strike.

2 THE COURT: Sustained. Motion granted.

3 Q. Don't tell me what somebody said. You saw the  
4 police go into your house?

5 A. Yes.

6 Q. And you did not get out of the car?

7 A. No.

8 Q. Did you see the police officer come back when he  
9 came out?

10 A. Yes.

11 Q. Was he alone?

12 A. Donnie was with him.

13 Q. And what did Donnie do when he came out of the  
14 house?

15 A. He got in the car and took off.

16 Q. So the police didn't take him with them?

17 A. No.

18 Q. And he was allowed to get in his car and leave?

19 A. Yes.

20 Q. And did you see him anymore on the 27th?

21 A. I went to Smokey O's to get me and my kids  
22 something to eat.

23 Q. Where did you see him? I don't want to know what  
24 you were doing.

25 A. Smokey O's.



1 Q. Was he there when you got there?

2 A. No, he wasn't.

3 Q. When you pulled up, you did not see David Donnie  
4 Williams in the parking area?

5 A. No.

6 Q. Where were you at Smokey O's when you saw Donnie?

7 A. I was on the inside ordering some food.

8 Q. Where did you see him at when you saw him?

9 A. He walked in there.

10 Q. He walked into Smokey O's?

11 A. Yes.

12 Q. Let me ask you: What were you driving?

13 A. My daughter was driving.

14 Q. Was she in Smokey O's with you or outside?

15 A. She came in there with me.

16 Q. Is this the car she normally drives?

17 A. Yes; white Lancer.

18 Q. So this is a car that Mr. Williams is familiar?

19 A. Yes.

20 Q. Knows that's your daughter's car?

21 A. Yes.

22 Q. And knows that you ride with your daughter?

23 A. Yes.

24 Q. Did he say anything to you?

25 A. He told me, bitch, I don't like what you did to me.

1 And I told Donnie, why don't you leave me alone.

2 Q. When he said, I don't like what you did to me, did  
3 he tell you what it was that you did to him?

4 A. No, he didn't tell me at the time.

5 Q. That's all he said when he walked in?

6 A. When he walked in, yes.

7 Q. And when you asked him To leave you alone, did he  
8 leave and turn around and walk out?

9 A. I walked out in front of him.

10 Q. You walked out?

11 A. Yes.

12 Q. And had you gotten your food yet?

13 A. I had ordered the food and paid for it.

14 Q. Did he stay in there and order food?

15 A. No. He walked out behind me.

16 Q. He walked right out the door behind you?

17 A. Yes.

18 Q. Did he say anything else to you or do anything to  
19 you?

20 A. When I was getting in the car, he was riding with  
21 somebody in a burgundy car with tinted windows, and  
22 he told me, bitch, I will kill you. And I said,  
23 Donnie, if you are going to do it, do it right  
24 here. I'm tired of you threatening my life.  
25 That's what I told him.

- 1 Q. And when you said that, what happened?
- 2 A. He got in the car and left.
- 3 Q. And did you see him anymore that day?
- 4 A. No.
- 5 Q. And that would have been the 27th?
- 6 A. 27th.
- 7 Q. Now, tell me when the next time after the 27th at
- 8 James O's that you saw him, David Donnie Williams.
- 9 A. I didn't see him no more at Smokey O's.
- 10 Q. After that?
- 11 A. I seen him on March 30th.
- 12 Q. Where were you on March 30th when you saw him?
- 13 A. I was at my residence picking up my daughter. But
- 14 she wasn't there at that time when I got there.
- 15 Q. And I believe you told us earlier that the bus
- 16 drops your daughter off at the house?
- 17 A. Yes.
- 18 Q. And you went there to pick her up?
- 19 A. Yes.
- 20 Q. Was anybody with you?
- 21 A. My daughter.
- 22 Q. And who else? Was that the only person?
- 23 A. My grandbaby.
- 24 Q. What car were you in?
- 25 A. White lancer.

1 Q. Were you driving?

2 A. No. My daughter was driving.

3 Q. And when you got there, you didn't see your  
4 daughter?

5 A. No.

6 Q. And when did you see her?

7 A. About two minutes later after me and my daughter  
8 pulled across the yard, Donnie came across the  
9 railroad where I live at with my daughter in the  
10 back. I told my 21-year-old daughter, I told you  
11 he had my daughter. I knew he had her. He was  
12 looking to get back at me.

13 Q. At this time how old was your daughter that he had  
14 with him?

15 A. Eight years old.

16 Q. She was in the car. Did he bring her to the house?

17 A. He parked across the road. At that time he knew he  
18 was trespassed from my property.

19 Q. Did he say anything to you for you to know he was  
20 trespassed from the property?

21 A. No.

22 Q. When he pulled across the road, did your  
23 eight-year-old daughter get out of the car?

24 A. He got out first and had my daughter by her hand  
25 holding her back.

1 Q. At that point was he in the yard or in the road?

2 A. He walked half way across the roadway from where  
3 the car was parked to the car I was in.

4 Q. Did you get out of the car?

5 A. No, I didn't.

6 Q. What were you doing?

7 A. I was sitting in the car. And my grandbaby  
8 accidentally opened the back door.

9 Q. Your grandbaby is in the backseat and opens the  
10 back door?

11 A. Yes.

12 Q. What happened?

13 A. Donnie was holding my eight-year-old daughter back,  
14 holding her back from getting in the car, and I was  
15 fussing at Donnie, why did you get my daughter off  
16 the bus. And he said, bitch, I don't like what you  
17 did. Bitch, I don't like what you did to me, and  
18 pulled my sweatshirt trying to get me out of the  
19 car.

20 Q. And was your door open?

21 A. No.

22 Q. He reached in to --

23 A. -- the back passenger side of the car.

24 Q. And was pulling you?

25 A. Pulling on the back of my sweatshirt.

1 Q. Did he make any threats to you?

2 A. He said he was going to kill me.

3 Q. Do you know how many times he told you?

4 A. That he told me several times.

5 Q. Did you believe him?

6 A. Yes, I believed him. He looked very serious  
7 because he was on that crack.

8 Q. Did you believe he was --

9 A. Yes, I did.

10 Q. Were you afraid he was going to kill you?

11 A. Yes.

12 Q. Was your door ever opened?

13 A. No, it wasn't.

14 Q. After he tried to pull you out of the front seat  
15 through the back, when after that point did he  
16 let -- turn your daughter loose? Or did he ever  
17 turn her loose?

18 A. He was steadily holding her hand while he was  
19 talking, and then he turned her hand loose. And  
20 then we pulled off, and he pulled in front of the  
21 stop sign in front of my yard trying to make her  
22 wreck.

23 Q. But that didn't work out?

24 A. No, that didn't work.

25 Q. Did he go ahead and leave?

1 A. Yes, he did.

2 Q. Where did you go when he left there?

3 A. I went to my job.

4 Q. You went to work?

5 A. No. I went to the police station first, and then I  
6 went to my job.

7 Q. Do you know what officer was on duty when you went?

8 A. Older aged man. I don't know his name.

9 Q. Black or white?

10 A. He black.

11 Q. And did you make a report?

12 A. Yes, I did.

13 Q. And told them what you told us here today?

14 A. Yes.

15 Q. And do you know if they took any action on that  
16 report?

17 A. Well, I believe I did. And I did a formal trespass  
18 warrant that same day.

19 MR. AUSBORN: I object, Your Honor, to  
20 speculation unless she has actual knowledge.

21 THE COURT: You said you did a trespass warrant  
22 that same day?

23 THE WITNESS: Trespass warrant that same day.

24 Q. So that would be two now in about a week?

25 A. Yes. Yes.



1 Q. After you made the report, you went to work?

2 A. Went to work.

3 Q. Did you see Donnie at work?

4 A. No.

5 Q. He wasn't scheduled to work that day?

6 A. No. He had got fired.

7 Q. When did he get fired?

8 A. On the 24th, I believe. I don't know exactly what  
9 happened, but he didn't appear at work after the  
10 24th?

11 MR. AUSBORN: Object, Your Honor, to  
12 speculation unless she has --

13 THE COURT: Sustained.

14 Q. So you didn't see him anymore after the 24th at  
15 work?

16 A. No, I didn't.

17 Q. How do you know that he was fired? I'm talking  
18 about know, How did you find out that he was fired?

19 A. I just know cause I ain't seen him at work.

20 Q. Okay. Now, you went to work. Did you see him  
21 anymore that day? This is the 30th when we are  
22 talking about him taking your daughter off the bus.

23 A. I don't remember seeing him no more.

24 Q. You went to work and got off at whatever time you  
25 get off. Did you see him that night?

1 A. I can't remember all of the dates he came to my  
2 job.

3 Q. We will get to that in a few minutes, but we are  
4 working specifically with the 30th because we have  
5 an incident on that day.

6 A. Okay.

7 Q. As far as you remember, you didn't see him anymore  
8 that night?

9 A. No.

10 Q. Now, what about April 17th? Do you remember  
11 specifically that day?

12 A. Yes, I did.

13 Q. What happened on April 17th?

14 A. I was at my house washing some clothes. At that  
15 time I was afraid to live in my house.

16 Q. Turn around and speak so what you say can project  
17 out and they can hear you.

18 A. At the time I was at my house washing some clothes,  
19 and I was afraid to go to my house by myself. The  
20 police told me to take someone with me

21 MR. AUSBORN: Object as to what she was told.

22 THE COURT: Sustained.

23 Q. Don't tell us what anybody else told you. Just  
24 tell us what you did.

25 A. Okay.

1 Q. You were at your home. Who was with you?

2 A. My 14-year-old son.

3 Q. And his name is?

4 A. Quadarius Williams.

5 Q. And you were there doing what?

6 A. Washing clothes.

7 Q. Had you spent the night there?

8 A. No, I didn't.

9 Q. You were just there to wash clothes?

10 A. Yes.

11 Q. And did David Donnie Williams come to your house

12 that day?

13 A. No, he didn't.

14 Q. Did you see him at all on the 17th?

15 A. Yes, at the grocery store.

16 Q. Which grocery store would that have been?

17 A. AG.

18 Q. Where is the AG as it relates to your house?

19 A. It is right next door.

20 Q. So in other words, you have a --

21 A. You have to walk out my yard across the street.

22 Q. Up one street and you are at the AG?

23 A. Yes.

24 Q. What did you do at the AG?

25 A. I went to get some orange juice.

1 Q. You got orange juice?

2 A. I paid for the orange juice.

3 Q. Did you see Donnie Williams when you were in the  
4 store?

5 A. Not in the store, period.

6 Q. I know in relationship to the AG and your house you  
7 have to walk over there. Did you walk?

8 A. No, I didn't.

9 Q. How did you get there?

10 A. I drove.

11 Q. And what were you driving?

12 A. A white Lancer.

13 Q. And that's the same Lancer you told us about  
14 earlier?

15 A. In front of the Old Radio Shack. That's where I  
16 parked at.

17 Q. Did you see David Donnie Williams anywhere when you  
18 parked?

19 A. No, I didn't.

20 Q. And I believe you said you bought orange juice?

21 A. Bought orange juice.

22 Q. Paid for the orange juice?

23 A. Paid for it.

24 Q. And what did you do after that?

25 A. I went to come out of the store and I saw Donnie

1 Williams.

2 Q. Where was he parked?

3 A. Parked right beside there, backed where the driver  
4 side -- he wouldn't have to get out.

5 Q. And he backed in there?

6 A. Yes.

7 Q. And you say you paused?

8 A. I paused for a minute, and I was scared.

9 Q. You were scared?

10 A. I was scared.

11 Q. Did you come on out of the store?

12 A. I hesitated. And I said, you go anywhere you want  
13 to go and he can go where he want, and I went on  
14 out of the store. And when I was getting in the  
15 car, he said, bitch, I don't like what you did to  
16 me. And I said, Donnie, why don't you leave me  
17 alone. I ain't bothering you. He said, why don't  
18 you leave my mama alone and he said shut up before  
19 I fuck you up.

20 Q. And did you say anything back to him besides leave  
21 you alone?

22 A. When he told my son, I'll fuck you up, I told my  
23 son to get in the car and don't say nothing to him.  
24 And then he said, if you mess around with me, I'd  
25 rather see you in heaven or hell. And he --

1 Q. I don't want you to tell us what he --

2 A. Sorry.

3 Q. He threatened your life?

4 A. Yes.

5 Q. And were you afraid of him?

6 A. Yes, I was.

7 Q. And did you get in your car and leave?

8 A. Not at that incident. He was steadily passing  
9 words to words to me.

10 Q. Why did he leave first versus you?

11 A. I don't know why he left first.

12 Q. And when you left, where did he go?

13 A. Where did he go?

14 Q. Where did you go?

15 A. I left fixing to head going to my daughter's  
16 apartment.

17 Q. Was he by himself?

18 A. No, he was not. Anthony Blakely was in the car  
19 with him.

20 Q. And it was Anthony Blakely?

21 A. Yes.

22 Q. And you left going towards your daughter's  
23 apartment?

24 A. Yes.

25 Q. Did you see him leave?

1 A. Well, he had left. And when I looked up in my  
2 rearview mirror, he was coming up behind me. And I  
3 stopped in the middle of the parking lot and told  
4 them to send a unit down there, they had did  
5 several police reports on the man, but he refused  
6 to leave me alone. And when he saw Freeman pull  
7 up, that's the time he pulled off and went towards  
8 Aberfoil and they had that long chase.

9 Q. And that's last time you saw him that day?

10 A. I seen him again that evening down at the store  
11 again with somebody else.

12 Q. The same evening after the chase?

13 A. Yes.

14 Q. And who was he with that evening at the store?

15 A. It was two ladies. I don't know them.

16 Q. And did you make a report?

17 A. No, I didn't have time to go back at that time.

18 My daughter had to be at work at 5:00. She was  
19 running late.

20 Q. Now, I'm talking about the earlier event at the  
21 store.

22 A. Did I see him again?

23 Q. No, not the second time.

24 A. Yeah, I went back up to the police station and did  
25 one.



1 Q. Tell me about the second time you saw him at the  
2 AG. Was he in the store?

3 A. No. He was in the back of the car. I had pulled  
4 up, and she was trying to let the window up and  
5 afraid that he was going to get him. And I told  
6 them, get that man away from me because he is very  
7 dangerous. And he went to pointing at me shaking  
8 his head.

9 Q. And so he never said anything to you on that  
10 occasion?

11 A. No.

12 Q. He was just pointing and shaking his head?

13 A. Yes.

14 Q. Did you see him anymore after that on the 17th?

15 A. No, I didn't.

16 THE COURT: How much more?

17 MS. PENN: I'm close to the end, but you can  
18 take a break. I need to get in to some other  
19 stuff.

20 THE COURT: Take a ten-minute recess. Don't  
21 discuss the case. Restrooms are on the bottom  
22 floor.

23 (Whereupon a short recess was taken, after  
24 which time the jury returned to the courtroom,  
25 and the following proceedings were had in open

1 court:)

2 DIRECT EXAMINATION (Cont'd)

3 BY MRS. PENN:

4 Q. Were there other instances of domestic violence  
5 that you suffered at the hands of Mr. Williams?

6 A. Well, a lot of times. He had came down on my job  
7 when I was getting off, and my daughter came to  
8 pick me up. And he was sitting at the guard shack  
9 one night, and he came in the gate. And in order  
10 to get in there, he was supposed to show your  
11 picture ID, and he was pulling on the back of my  
12 coat. And my daughter was getting ready to come  
13 out, and she realized she couldn't come out. And  
14 at that time he started, bitch, I'll do this and  
15 that, and he got in the car with my daughter. And  
16 that's the night we went up looking for the police,  
17 went up to the police station, and he followed us  
18 up there to the police station.

19 Q. He actually followed you to the police station?

20 A. Yes, he did.

21 Q. And you were scared to get out of the car?

22 A. I was scared to get out of the car. At that time  
23 we were blowing and I told my daughter to find a  
24 police unit somewhere because I was afraid to get  
25 out at the police station.

1 Q. Did he follow you around town?

2 A. No, he didn't.

3 Q. After you got to the police station, he stopped  
4 following you?

5 A. Yes. We went back to the police station and  
6 officer Finney was up there and he did the police  
7 report on me -- on him.

8 Q. Any other instances of domestic violence,  
9 harassment or stalking from Mr. Williams?

10 A. I can't remember the date, but he came down there  
11 several nights on my job out in the parking lot.

12 Q. Tell me about those instances. When you come out  
13 of work -- you said something about the gate or  
14 security booth?

15 A. Yes. You have to show a picture to get in.

16 Q. Was someone in that booth?

17 A. There is supposed to be someone there all the time.

18 Q. And where did your daughter park?

19 A. In front of the guard shack.

20 Q. And when you would see him at night when you got  
21 off, where would he be?

22 A. Sitting out there in the parking lot sometime.

23 Q. Would it be out past the guard shack or outside?

24 A. Sometimes he would just come park by the guard  
25 shack; sometime.

1 Q. And when you would see him out there and get in the  
2 car, would he do anything specifically?

3 A. No. He was just watching me.

4 Q. Did he follow you?

5 A. Yeah, some nights he followed me to my daughter's  
6 apartment.

7 Q. And what did you do when you got over there?

8 A. I was afraid to get out of the car.

9 Q. What did you do?

10 A. I would wait until my daughter got out, and I was  
11 afraid he was standing out there.

12 Q. So you would wait and take your chance to run in  
13 the house?

14 A. Yes.

15 Q. And this would not be anything -- he wouldn't harm  
16 you at this point, but he was just following you  
17 and watching you?

18 A. Yes.

19 Q. And can you tell me about how many times he's  
20 followed you at night?

21 A. Several times.

22 Q. Is it five?

23 MR. AUSBORN: Your Honor, if I may.

24 THE COURT: Hold on.

25 A. Probably one or two times.

1 MR. AUSBORN: Your Honor, can we approach?

2 THE COURT: Come up.

3 (Whereupon the following Bench conference was  
4 held outside the hearing of the jury:)

5 MR. AUSBORN: The two children in the  
6 courtroom, I am concerned about whether or not they  
7 are witnesses.

8 THE COURT: They are not. As long as they act  
9 right, which I know they will, they are fine.

10 MRS. PENN: Thank you, Judge.

11 (In open court.)

12 Q. (By Mrs. Penn:) Is that one or two times after you  
13 broke up with him this time or is that over the  
14 course of the relationship?

15 A. This is after I broke up with him this time.

16 Q. Had he followed you any other times?

17 A. It's been several times. I just can't remember all  
18 of the dates.

19 And a lot of mornings when my daughter used to  
20 take her son to Headstart, he know what time she  
21 would take him, and I be at the house getting my  
22 sleep, he would come and follow her to the  
23 apartment.

24 Q. But you didn't see any of these?

25 A. I didn't see any of these.

1 Q. I'm talking about the times you witnessed him  
2 following you?

3 A. A lot of times I would be taking my daughter to  
4 school, he would see that car and follow me where I  
5 was going if I go to the elementary school.

6 Q. So you noticed him in the mornings following you?

7 A. Yes, yes.

8 Q. Would it be every morning?

9 A. Not every morning.

10 Q. But you can't give me a count about how many times  
11 it was?

12 A. No.

13 Q. Was there any other times where there was actual  
14 physical domestic violence?

15 A. Talking about during the time I signed the warrants  
16 on him?

17 Q. No.

18 A. Talking about during the relationship that we had?

19 Q. Yes.

20 A. Yes, there was.

21 Q. And can you tell us what that would be?

22 A. These going back years.

23 Q. Okay.

24 A. This was back in 2001 in January, he took me down  
25 the road by "The Spot". My granddaughter was with

1 me and she wasn't but eight at the time. He took  
2 me in a wooded area, and he threatened to kill me  
3 then if I didn't give him \$20.

4 Q. Did you give him \$20?

5 A. Yes. I give him \$20 so he would leave me alone.

6 Q. Were there other times there was some kind of  
7 domestic violence?

8 A. Yes. That same year on February 17th (phonetic),  
9 me and my daughter had took my grandbaby and her  
10 son uptown to get a haircut, and I couldn't find  
11 him, and when we walked back home, he was in the  
12 house searching through my drawers. I don't know  
13 what he was looking for. I don't know what he was  
14 doing in there rambling, and I went in there to sit  
15 down, and I was talking on the phone with one of my  
16 lady friends I work with at work, and he came back  
17 and saw me on the phone. And he said, what you  
18 doing on the phone, and I said, none of your  
19 business. And he grabbed me by my wrist, and I  
20 told the lady I would call her back later on. And  
21 all of the sudden he left out of the house and came  
22 back, and my daughter had left her purse on the  
23 table. And she went back in there after she had  
24 left again. We didn't realize it was missing at  
25 the time and nobody got that purse but Donnie. She



1 had \$90 (phonetic) dollars. The baby's Medicaid  
2 card was in there, and the voucher -- about a  
3 hundred dollars worth of vouchers was in there. He  
4 got all of that. I don't know what he did with the  
5 purse, but when he came back he was arguing at me.

6 Q. Okay. Is it fair to say that you had a stormy  
7 relationship with Mr. Williams?

8 A. It was a violent relationship, very violent.

9 Q. Has there been any times when Mr. Williams has told  
10 you to leave me alone, I don't want you anymore?

11 A. He have never told me that.

12 Q. Giving you any indication that he wanted to break  
13 off this relationship?

14 A. He have never told me that.

15 MRS. PENN: That's all I have right now for  
16 this witness, Judge.

17 THE COURT: Cross.

18 CROSS-EXAMINATION

19 BY MR. AUSBORN:

20 Q. May it please the Court. Ms. Williams, I am  
21 attorney Keith Ausborn. Of course, you know I  
22 represent David Donnie Williams.

23 If I ask you a question and you don't  
24 understand that question, bring it to my attention  
25 and I'll try to clarify it for you.

1 I want to take you back to 1997 when you first  
2 met Mr. Donnie Williams; is that correct?

3 A. Yes.

4 Q. And immediately thereafterwards you-all struck up a  
5 conversation and you started dating one another; is  
6 that correct?

7 A. Yes.

8 Q. And you have been dating on and off from 1997 to  
9 2004; is that correct?

10 A. Yes.

11 Q. And you testified earlier under direct examination  
12 that Mr. Donnie Williams was a crack addict, he  
13 used crack; is that correct?

14 A. Yes.

15 Q. And nowhere in any of the statements that you made  
16 to law enforcement, did you state that you -- If  
17 Donnie Williams asked you to take him somewhere to  
18 get crack, did you?

19 A. No.

20 Q. That is not in your statement, is it?

21 A. No.

22 Q. Now, how long do you contend that Mr. Donnie  
23 Williams was doing crack?

24 A. He been doing it off and on the whole while I was  
25 with him.

1 Q. Okay. Now, you said he has been doing crack on and  
2 off since 1997; is that correct, that's your  
3 contention?

4 A. Yes.

5 Q. And you knew about it?

6 A. Yes.

7 Q. And you stayed with him?

8 A. Yes, because he was threatening me.

9 Q. Okay. Let's talk about the alleged threats.

10 How far did you go in school?

11 A. 12th grade.

12 Q. You can read and write okay?

13 A. Yes.

14 Q. Have you ever been diagnosed with a mental disease  
15 or defect or anything like that?

16 A. No.

17 Q. You consider yourself a sane and rational  
18 individual?

19 A. Yes.

20 Q. How sane and rational is it that you stayed with a  
21 man you contend has been threatening you all over  
22 the years? Is that sane?

23 A. No.

24 Q. Is it sane that you stay with a man that you  
25 contend has been abusing you all of these years?

1 Is that sane?

2 A. No.

3 Q. Now, you contend that Mr. Donnie Williams assaulted  
4 you. I think you said 2001. This was an assault  
5 case; is that correct?

6 A. Yes.

7 Q. Mr. Donnie Williams has never been convicted of  
8 assaulting you in 2001; is that correct?

9 A. Yes.

10 Q. Has Mr. Donnie Williams been convicted of assault,  
11 assault on you in 2001?

12 A. Yes.

13 Q. Do you have any proof showing that Mr. Donnie  
14 Williams was convicted of assault in 2001? Do you  
15 have something you can offer to the ladies and  
16 gentlemen of the jury?

17 A. I stated to my lawyer about that just a few minutes  
18 ago.

19 Q. So you don't have anything, do you? Do you have a  
20 document, a physical document, that we can examine  
21 and look at the four corners of it and see where  
22 Mr. Donnie Williams was convicted of assault in  
23 2001? You don't have that, do you?

24 A. No.

25 Q. Let me ask you to state your address for the

1 Record.

2 A. 1010 MLK Boulevard, Lot Number 2.

3 Q. Are you buying that place or renting? Leasing it?

4 A. I'm renting.

5 Q. Who's the landlord of that place?

6 A. Mr. Wilbert Jernigan.

7 Q. Now, for the clarification of the ladies and  
8 gentlemen of the jury, do you know where  
9 Mr. Wilbert Jernigan is employed at?

10 A. Yes.

11 Q. Where is that?

12 A. Circuit clerk's office in the courthouse.

13 Q. Okay. Now, is that who you pay your rent to?

14 A. Yes.

15 Q. You have been in that place for how many years?

16 A. Eight or nine years.

17 Q. Eight or Nine years you have established your  
18 business relationship with Mr. Jernigan; is that  
19 correct?

20 A. Yes.

21 Q. Do you consider yourself a personal friend of  
22 Mr. Jernigan also?

23 A. Yes.

24 Q. Is he a friend of yours also?

25 A. Yes.

1 Q. Now, tell the ladies and gentlemen of the jury on  
2 the two complaints that you swore out against my  
3 client, the stalking, who did you go to, to get  
4 that warrant?

5 A. Mr. Wilbert Jernigan.

6 Q. The harassing, who did you go to, to get that  
7 warrant?

8 A. Mr. Wilbert Jernigan.

9 Q. You went to your friend, didn't you? Is that not  
10 your friend who you went to?

11 A. Yes.

12 Q. Now, you state that -- And I made some notation so  
13 I'll take you back.

14 You said March 19th is when you first got  
15 harassed and stalked, okay; for the month of March;  
16 isn't that correct?

17 A. Yes.

18 Q. Did you swear out a warrant on March 19th?

19 A. No, I didn't do a warrant then.

20 Q. Excuse me.

21 A. No, I didn't.

22 Q. Okay. You stated that he harassed you several  
23 times on March 19th?

24 A. Yes.

25 Q. You didn't swear out a warrant not one time on

1 March 19th?

2 A. No. Because at the time --

3 Q. Hold on a minute. Stay right there. Don't get  
4 ahead of me.

5 Were you in fear of your safety on March 19th?

6 A. Yes.

7 Q. You thought this young man was going to kill you?

8 A. Yes.

9 Q. You were in fear for your safety?

10 A. Yes.

11 Q. But you didn't swear out a warrant, did you?

12 A. No.

13 Q. You ever heard of 911?

14 A. Yes.

15 Q. Did you call 911 on March 19th?

16 A. At that time I wasn't thinking --

17 Q. Answer my question yes or no.

18 A. No.

19 Q. You've heard of 911, haven't you?

20 A. Yes, I did.

21 Q. It means help, doesn't it?

22 A. Yes.

23 Q. You didn't call for help?

24 A. No.

25 Q. Now, March 19th, you got any witnesses who will



1 testify that you got harassed on March 19th?

2 A. My 21-year-old daughter.

3 Q. Now, you gave birth to that daughter, did you not?

4 A. Yes.

5 Q. That's not his child, is it?

6 A. No.

7 Q. Is her allegiance with you or with him?

8 A. I don't understand what you mean.

9 Q. Her loyalty with you or him?

10 A. Me.

11 Q. Did you talk to her about this case?

12 A. I hadn't talked to her 'cause she saw it.

13 Q. Okay. All right.

14 Now, you state that you were in eminent fear of  
15 bodily harm by my client Mr. David Donnie Williams;  
16 is that correct?

17 A. Yes.

18 Q. Ma'am, did you at any time apply to the circuit  
19 clerk's office for a petition for protection from  
20 abuse?

21 A. At that time I was thinking about that --

22 Q. Answer my question. Is that a yes or no?

23 A. No.

24 Q. You knew about it, though, didn't you?

25 A. Yes.

1 Q. And you knew that a petition for protection from  
2 abuse is actually a physical injunction or court  
3 order restraining this young man from having any  
4 contact with you? You knew you could apply for  
5 that, didn't you?

6 A. Yes.

7 Q. And you didn't do that, did you?

8 A. No.

9 Q. And the reason you didn't do it is because you  
10 didn't want to stay away from him?

11 A. I was afraid that he would kill me.

12 Q. But you didn't apply for a court order that would  
13 have secured your person. Does that make any  
14 sense?

15 A. No.

16 Q. There is a lot that doesn't make sense about this  
17 case.

18 You say you were harassed on March 27th; is  
19 that correct?

20 A. Yes, I was.

21 Q. Several times. Isn't that what you testified to?

22 A. Yes, I said --

23 Q. Did you apply for a warrant or affidavit on March  
24 27th?

25 A. I couldn't. That was a Saturday.

1 Q. Did you call 911 on March 27th?

2 A. No, I didn't.

3 Q. You know that 911 responds on weekends, don't you?

4 A. I wasn't thinking at the time.

5 Q. Wasn't thinking?

6 A. I was afraid.

7 Q. Too afraid to get some help? Does that make sense?

8 A. No, it don't.

9 Q. Wouldn't you agree that when people are afraid they  
10 get help and they pick up the phone and punch 911?  
11 Isn't that what people who are in fear of their  
12 safety, isn't that what they do?

13 A. Yes.

14 Q. Did you do that?

15 A. No.

16 Q. Now, you stayed with Donnie Williams on and off on  
17 over the years, didn't you?

18 A. Yes.

19 Q. He lived with you, didn't he?

20 A. Yes, he was there with me.

21 Q. He had a key with you, didn't he?

22 A. This time he didn't, breaking up in my house all  
23 the time and I wasn't there.

24 Q. Now, don't get ahead of me.

25 Now, did Donnie Williams have a key to your

1 residence at any time?

2 A. Up until he got locked up in 2001.

3 Q. You had him arrested for something in 2001?

4 A. Yes.

5 Q. He wasn't convicted, was he?

6 A. No.

7 Q. You're in the habit of filing false charges, aren't  
8 you?

9 A. No, I wasn't.

10 Q. You filed a false charge in 2001?

11 A. He wasn't threatening me. He went and got a lawyer  
12 to get charges dropped, and he said he'd give my  
13 daughter her money back.

14 MR. AUSBORN: I move to strike that as  
15 nonresponsive.

16 THE COURT: Denied.

17 A. That's what I did.

18 Q. On March 27th you testified that he was several  
19 times --

20 A. Yes, I did.

21 Q. Did you go down to the police station March 27th?

22 A. Yes.

23 Q. You were in your vehicle, weren't you?

24 A. No. I wasn't driving that day. That was at night.

25 Q. Who was driving?

1 A. They had escorted him out of my house and told him  
2 not to be coming back to my house. But why he was  
3 harassing me, I don't know.

4 Q. Did you have a vehicle on March 27th?

5 A. My daughter was driving. I was with her.

6 Q. Now, did you tell your daughter, take me down to  
7 the police station so I can get a warrant on  
8 Mr. David Donnie Williams?

9 A. After I told him I didn't want him no more, he  
10 should have left me alone.

11 Q. Answer my question.

12 A. No, I didn't.

13 Q. You testified under direct examination, and I heard  
14 you testify like 10, 15 or more times every time he  
15 saw you he was saying -- excuse my  
16 verbiage -- Bitch, why did you do that to me; I'm  
17 going to kill you; I'm going to "F" you up?

18 A. Yes, he did.

19 Q. Do you believe that?

20 A. Yes, I do. Because he was on that crack.

21 Q. You believe that, but not one time did you seek the  
22 protection of this court for a protection order  
23 against Mr. David Donnie Williams, not one time,  
24 did you?

25 A. No.

1 Q. Now, you testified that he stalked you about 15 or  
2 more times. Isn't that what you testified to ?

3 A. Yes, I sure did.

4 Q. Not one time out of that 15 or more times did you  
5 come down to the court and speak to your buddy the  
6 circuit clerk and say, can I get a protection  
7 order? You did don't that not one time, did you?

8 A. No, I didn't.

9 Q. Do you carry a gun?

10 A. No, I don't.

11 Q. Do you carry a knife?

12 A. No, I don't.

13 Q. You ain't no match for David Donnie Williams in a  
14 physical contest, are you?

15 A. Repeat that.

16 Q. Are you a match for him in a physical contest?

17 A. No.

18 Q. Knowing that you don't carry a gun, knowing that  
19 you don't carry a knife, knowing that you are not a  
20 match for him in a physical contest, you didn't  
21 seek law enforcement by going down to the police  
22 station and here and getting a warrant on him on  
23 March 19th? You didn't do it, did you?

24 A. No.

25 Q. You didn't do it on the 27th either, did you?

1 A. No.

2 Q. You were asked on direct examination did Donnie  
3 tell you at any time that he wanted to break up  
4 with you?

5 A. No, he didn't. He have never told me that.

6 Q. You would remember that, wouldn't you?

7 A. Yes. I told him that I wanted him to leave me  
8 alone. He said he would kill me and the other guy.  
9 He would kill the man first and kill me second.

10 Q. Let me ask you this right here: And you believe  
11 that?

12 A. Yes, I do.

13 Q. Now, other than your daughter, other than your  
14 kids, you have one neutral witness who is going to  
15 come to court and testify that they heard David  
16 Donnie Williams make a death threat to you?

17 A. No. Because he did it when nobody wasn't around.  
18 That's why he did it like that; he didn't want  
19 nobody to hear him say that.

20 Q. And you believe that?

21 A. Yes, I do.

22 Q. Now, people who are in fear of eminent harm and  
23 their safety respond accordingly, don't they?

24 A. Yes.

25 Q. You did don't that, now, did you?

1 A. No.

2 Q. You stated that you had Mr. David Donnie Williams  
3 trespassed from your house. Is that what you  
4 testified to?

5 A. Yes, I did.

6 Q. Now, let me ask you this: Can you produce a  
7 warrant, an affidavit for examination by this jury  
8 showing that you swore out a warrant against him  
9 for trespassing?

10 A. I did at the circuit clerk's office. I know I did  
11 it.

12 Q. Where is it?

13 A. I don't have it with me, but I did.

14 Q. It just disappeared out of thin air.

15 You knew you were scheduled to be in court  
16 today, didn't you?

17 A. Yes, I know that.

18 Q. Can you produce a court order that states that he  
19 was trespassed away from your person or residence  
20 or your job? Have you got something I can show the  
21 ladies and gentlemen of the jury?

22 A. I've got some witnesses about my job.

23 Q. My question to you is: Is there is a court order  
24 that would prove the application for trespassing  
25 warrant?



1 A. Repeat that again.

2 Q. Is there a court order that I can show the ladies  
3 and gentlemen of the jury that states that he was  
4 trespassed away from your person?

5 A. No.

6 Q. You got a court order saying he was trespassed away  
7 from your residence?

8 A. No.

9 Q. You got a trespassing order showing he was  
10 trespassed away from Wayne Farms?

11 A. No.

12 Q. In fact, he worked at Wayne Farms; is that correct?

13 A. He got fired at the time he kept harassing me and  
14 wasn't allowed on the property.

15 Q. Were you there when he had a communication with his  
16 boss, the last time he had communication with his  
17 boss?

18 A. Say that again. I don't understand.

19 Q. Were you physically there when he last spoke with  
20 his boss? The last time he was physically on the  
21 premises at Wayne Farms, were you there?

22 A. I don't understand what you are saying.

23 Q. Let me ask you: Can you see through walls?

24 A. No, I can't.

25 Q. Can you be in two or more places at one time?

1 A. No.

2 Q. When he last spoke with his boss, the last time you  
3 saw him there, were you in the middle of that  
4 conversation? Were you right there listening  
5 between him and his boss speaking?

6 A. I don't know where the conversation was made. I  
7 don't think I was there.

8 Q. So when you testified that he got fired, you don't  
9 have any information to back that up, personal  
10 information, do you?

11 A. No, I don't.

12 Q. You know that when you get on this stand you are  
13 supposed to be speaking truth. Do you know what it  
14 means to tell the truth?

15 A. Yes, I do.

16 Q. You knew that Donnie met somebody else.

17 Let's talk about it now.

18 A. Met somebody else? What you talking about?

19 Q. Let me set the stage for you.

20 March 30th, you knew Donnie was involved with  
21 somebody else?

22 A. No, I didn't.

23 Q. Yeah. You didn't?

24 A. No. He did not tell me that.

25 Q. March 25th did you know Donnie was involved with

1 anybody else?

2 A. No. He didn't tell me that.

3 Q. He didn't tell you that?

4 A. No.

5 Q. You found out about it though?

6 A. No, I didn't. I didn't know nothing about that.

7 Q. Now, you would see Donnie at Wayne Farm; am I  
8 right?

9 A. There was one particular day.

10 Q. Now, what shift did you work at Wayne Farm?

11 A. Second shift.

12 Q. What hours would that encompass?

13 A. From 4:15 until whenever we got off, all different  
14 time.

15 Q. What shift did Donnie work?

16 A. Same shift I was working.

17 Q. Y'all had a breakroom?

18 A. Yes.

19 Q. You know and I know, and the ladies and gentlemen  
20 of the jury need to know that you saw Donnie in the  
21 breakroom talking to other women from time to time.

22 A. No, I didn't. Because where I was sitting, I was  
23 sitting behind a wall and couldn't see Donnie over  
24 there. That is not true.

25 Q. You never saw Donnie talking to other women?

1 A. No, I didn't.

2 Q. You had a jealous spirit, didn't you?

3 A. No. Donnie was jealous of me. He told me he was  
4 jealous of me.

5 Q. This crack addict, physically abusive man, stalker  
6 you couldn't let go of him, could you?

7 A. He couldn't let go of me; because I wasn't  
8 bothering him. He accused me of other men's (sic)  
9 on my job, and I was only speaking to them. He  
10 have always accused me of them. He threatened to  
11 kill my cousin. He said he better not catch  
12 neither one of them at my house. He have told me  
13 that several times since he got out in 2004. He  
14 accused me of going with my cousin.

15 Q. Where do you work?

16 A. Wayne Farms.

17 Q. You have a second employment, don't you? You write  
18 short stories, fiction?

19 A. No, I don't.

20 Q. Because that's what's coming out of your mouth  
21 right now is fiction.

22 Can you produce a warrant to the ladies and  
23 gentlemen of the jury where your brother swore out  
24 a warrant against him for stalking?

25 A. No. Because I don't tell my brother my business.

1 I don't get my people involved like he did.

2 Q. You sit up there cozy like you a victim. Is that  
3 what you wan the ladies and gentlemen of the jury  
4 to know?

5 Look them over there in the eye.

6 A. (Witness complies.)

7 Q. You call yourself a victim. Isn't that what the  
8 State called you?

9 A. Yes.

10 Q. The same victim that you admit was not rational in  
11 getting some help; isn't that right?

12 A. Yes.

13 Q. The same victim that for seven long years put up  
14 with a stalker. That ain't rational; am I right?

15 A. You right. But you don't know what go on behind  
16 closed doors unless you tell it.

17 Q. This same victim (sic) that you contend was a crack  
18 addict, crack abuser, and he put up with it for  
19 seven years?

20 A. Yeah.

21 Did he tell you he was a crack head? He didn't  
22 tell you that, did he?

23 Q. That ain't rational, is it?

24 A. (No response.)

25 Q. I notice you made a statement -- you wrote out a

1 statement. Am I right about this?

2 A. About what?

3 Q. Nowhere in your statement do you mention anything  
4 about that he asked you to take him to pick up some  
5 crack?

6 A. No, I didn't. I wasn't going to do that. I know  
7 better than to do that. I'm not that type of  
8 person.

9 Q. Not that type of person. You just hauled him  
10 around to get his crack?

11 A. I don't haul no one around.

12 Q. How many kids you got?

13 A. Three.

14 Q. What ages are your minor children?

15 A. One of them is 21. The next one is 14, and the  
16 next one is eight.

17 Q. You know and I know and the ladies and gentlemen of  
18 the jury know about the plague that crack cocaine  
19 and other drugs have had on our society.

20 You know about that, don't you?

21 A. Yes, I do.

22 Q. You are raising small children; am I right about  
23 that?

24 A. Yes.

25 Q. You are not going to put them into a position where

1 here it is, they be exposed to that threat, are  
2 you, of somebody using or abuse, are you?

3 A. No.

4 Q. But yet the very man you contend was a crack  
5 addict, crack abuser had a key to your place and  
6 you held on to him for seven years?

7 A. He didn't have a key to my house all the time. I  
8 stated that earlier.

9 Q. Now, you know during the time of your and Donnie  
10 being together over the last seven years, you  
11 know he has loved your children like they were his  
12 own. You know that? Am I right about that?

13 A. Well, my oldest daughter, one time he didn't like  
14 her; he called her a bitch. That ain't liking her  
15 when you call them a bitch. And he jumped on her  
16 several times. Yes, he did.

17 Q. What year was that?

18 A. At home. I had just got off of my job, two times  
19 he did it at night.

20 Q. What year was it you say he jumped on your  
21 daughter?

22 A. I can't remember the years, but he have did it.

23 He wait until I come off of work to start  
24 arguing and fussing. And my daughter be trying to  
25 help me out. And that's the time he jump on her.

1 I can't remember the years that he did. He know he  
2 did it.

3 Q. You got a warrant and affidavit that you can show  
4 the ladies and gentlemen of the jury?

5 A. No.

6 Q. You got a court order for petition for protection  
7 from abuse where you wanted to stop this abuser  
8 from assaulting your daughter?

9 A. No.

10 Q. Can you produce a 911 audiotape recording where you  
11 call 911 and say, get out here; I got an abusive  
12 man assaulting my daughter?

13 A. No. But everyone around here know him. They know  
14 he's a crack head. Everyone know him.

15 Q. Well, let me ask you this: What are you if you  
16 have a man as awful as he is, and you are still  
17 there with him?

18 A. I told you the man was threatening me. I didn't  
19 have no other choice. He said he would kill me and  
20 kill the man first. And he meant that. Don't  
21 nobody know what was going on behind closed doors.

22 Q. Don't nobody know?

23 A. He was very abusive to me.

24 Q. Let me ask you this: Do you have one medical  
25 report showing that you suffered physical abuse



1 from this young man?

2 A. No. I can tell you one incident he did to me back  
3 in '98. I didn't go because he didn't let me go.

4 Q. Ma'am, my question to you is: Do you have one  
5 medical report where we can see even a small bruise  
6 that he committed against your person?

7 A. No. You won't let me tell you. I'll tell you what  
8 he did.

9 Q. You got a photograph we can see?

10 A. No. Because he wouldn't let me do none of it;  
11 that's why.

12 Q. You want us to believe that he shouted at you 24  
13 hours a day, seven days a week sometimes, the last  
14 seven years?

15 A. No.

16 Q. Because isn't it a fact that if he physically  
17 assaulted you to where you suffered physical  
18 injury, that at some point you had an opportunity  
19 to escape that assault and go to the hospital and  
20 get some treatment?

21 A. When a person won't let you go, how was you going  
22 to go and go out the door or nothing.

23 That man messed up my face in 1998 because I  
24 couldn't go to my job. And I went to the doctor to  
25 get an excuse so I wouldn't get fired.

1 Q. You went to the doctor to get an excuse?

2 A. Yes.

3 Q. Let me ask you: That same doctor you went to to  
4 get an excuse, did you tell them you had been  
5 physically battered?

6 A. Yes, I told that to them. Yes, I did.

7 Q. Where is the report?

8 A. I don't have it. He did that. His family know  
9 about it. I told them about it. He wouldn't allow  
10 me to go out the house. I called them up and told  
11 them about it.

12 Q. So we have a crack addict, crack abuser; we've got  
13 a stalker, a batterer. What else you want to call  
14 him? And you stayed with him?

15 A. He was staying with me. He wouldn't leave. He  
16 said he wasn't going nowhere. He told me to go  
17 back to my daughter's house to stay. He told me he  
18 wasn't going nowhere. He was following me,  
19 harassing me. I wasn't going to none of his  
20 relatives' houses trying to contact him in no way  
21 when I left him.

22 Q. Now, let me turn your attention to the two  
23 contentions that are before this Court.

24 Stalking: You agree there ain't no court order  
25 that you can offer up to the ladies and gentlemen

1 of the jury to where you have an injunction that  
2 says he can't come near your person, near your  
3 residence or near your job?

4 It doesn't exist, does it?

5 A. I did a criminal trespass that he is not allowed  
6 back to my property. He is not allowed back down  
7 there.

8 Q. Let me ask you this -- I haven't seen one.

9 A. Well, I did one. It was on March 30th when he got  
10 my baby off that bus. I went down there before I  
11 went to my job.

12 Q. The State of Alabama gave me discovery, which they  
13 are required to do to show me everything they  
14 intend to offer into evidence.

15 A. Well, I did one on March 24th and did another one,  
16 criminal trespass, on March 30th.

17 Q. Well, let me ask you this: What is he charged with  
18 today?

19 A. Harassment and stalking.

20 Q. Did I hear a third charge, criminal trespassing?

21 A. I did a criminal trespass against him on March  
22 30th, yes, I did.

23 Q. Let me ask you this: Is there two indictments, one  
24 for stalking and one for harassment? Is that  
25 right?

1 A. I guess so.

2 Q. There ain't any third one, is it, for criminal  
3 trespass?

4 A. I know I did one.

5 Q. You did, huh?

6 A. Yes.

7 Q. Have you ever been diagnosed with amnesia?

8 A. No.

9 Q. Your memory is real selective, though, isn't it?

10 A. No. I could remember.

11 Q. You can?

12 A. Yes, I can.

13 Q. Let me test you on it.

14 When is the last time you had sexual relations  
15 with Mr. Donnie Williams?

16 A. It was March. I think it was March 18th when we  
17 broke up.

18 Q. March the 18th?

19 A. Yes.

20 Q. Did that take place at your house?

21 A. Yes.

22 Q. He didn't force himself on you, now, did he?

23 A. Yes, he did.

24 Q. He did?

25 A. Yes.

1 Q. This gets good. You got a rape complaint against  
2 Mr. Donnie Williams?

3 A. No.

4 Q. Were you raped?

5 A. I didn't say I was raped.

6 Q. Were you?

7 A. No.

8 Q. Did you consent to sex?

9 A. No, I didn't. It was him that want it; I didn't.

10 Q. Did you tell him, stop, Donnie, I don't want to do  
11 this?

12 A. I be telling him a lot of times I don't want to be  
13 bothered because I be tired.

14 Q. Let me ask you this: Did you tell him that on that  
15 date?

16 A. He get mad if I do it. Which he have accused me of  
17 being with other men, but I be on my job.

18 Q. Did you tell him on that date, no, I don't want to  
19 have sex with you; don't touch me?

20 A. I be telling him I was tired.

21 Q. Did you tell him that?

22 A. Yes, I did.

23 Q. But he had sex with you anyway?

24 A. Yes.

25 Q. You didn't swear out a rape complaint?

1 A. Just like I told you, he say I've been with another  
2 man if I didn't. He have always accused me of  
3 another man.

4 Q. You get violated, and you want the ladies and  
5 gentlemen of the jury to believe that the only  
6 reason why you didn't swear out a warrant is he  
7 will accuse you of being with another man?

8 A. He have told me that.

9 Q. And this is the same man you have been testifying  
10 to all morning long you didn't want to have no  
11 dealings with. Does that make is sense?

12 A. To me it do.

13 Q. If he thought you was with another man, maybe  
14 that's the reason he left you alone?

15 A. But he is lying because I haven't been with another  
16 man since I've been dating him.

17 Q. You going to do everything you can to prove your  
18 loyalty to this man because you don't want Donnie  
19 to leave?

20 A. Donnie is a big liar.

21 Q. Is that not what this is about? What happened in  
22 this case is Donnie told you he was leaving you.

23 A. No, he didn't. He have never told me that.

24 Q. Seven years of a relationship going nowhere --

25 MRS. PENN: Your Honor, I object. If he wants

1 to ask a question, he can ask a question, but don't  
2 testify.

3 THE COURT: Sustained.

4 Q. You agree it was seven years of a relationship  
5 going nowhere? You didn't marry Donnie, did you?

6 A. He didn't want to go nowhere. I was in my house.  
7 He was living with me. He said he wasn't going  
8 nowhere. That's what he stated to me. I  
9 volunteered to leave my house and go to my sister  
10 and them, and he came to my house and jumped on me  
11 that day and stole her purse. And I had to leave  
12 my house for six long weeks. And he know he did  
13 this to me. I was afraid to stay in my house then.

14 Q. And you got back with him, didn't you?

15 A. He came to my house. He had broke out of  
16 prison -- out of jail up here.

17 Q. And you got back with him?

18 A. He was hanging around my house that night. Folks  
19 didn't know -- he was hanging around; he left and  
20 went to Atlanta.

21 Q. And he was hanging around your house and you opened  
22 up the door and --

23 A. He wouldn't leave my residence. And he kept  
24 disturbing me. And he said he wanted to talk, and  
25 I let him in.

1 Q. The same person that you said had been violent to  
2 you over the years, you let him in?

3 A. Yes, because he wouldn't leave my door.

4 Q. Does that make sense?

5 A. No, it don't.

6 Q. To let the threat in if you are afraid of the  
7 threat, does that make sense?

8 A. If I didn't open the door, he was going to break up  
9 in there like he had done, breaking up in there.  
10 He don't have a key.

11 Q. You got a warrant and affidavit to back all of this  
12 up? You don't got nothing, do you?

13 A. No.

14 Q. I thought so.

15 Now, you know and I know and the ladies and  
16 gentlemen of the jury know that the only reason you  
17 were able to get a stalking warrant and affidavit  
18 and a harassment warrant and affidavit is because  
19 you went to your friend --

20 MRS. PENN: He is testifying and I object. He  
21 is testifying.

22 THE COURT: Finish the question.

23 Q. You went to your friend to get this, didn't you?

24 A. Yeah, he my friend. He's my landlord. I'm  
25 supposed to be a friend. I'm living in his house.



1 Q. Uh-huh (affirmative response).

2 Now, you said earlier that Donnie grabbed  
3 you -- what date was that on?

4 A. On the 24th.

5 Q. The 24th?

6 A. Yes, on my job, on my white smock. And he got  
7 caught doing it. And they have a policy, husband  
8 and wife not supposed to do that on my job. And  
9 David Donnie Williams knows this. He was trying to  
10 make me lose my job like he said to me at my  
11 daughter's on March 19th.

12 Q. That offended you, didn't it?

13 A. Yes, it did.

14 Q. And hurt you when he physically grabbed you?

15 A. Yes, it hurt me, in feeling it hurt me, not  
16 physically.

17 Q. Did you swear out a warrant on him on March 25th?

18 A. I had did one earlier before I went to work.

19 Q. Answer my question. Did you swear out a warrant on  
20 March 25th?

21 A. This was on my job. I couldn't do it at work.

22 Q. My question to you is a yes or no.

23 A. No. I couldn't do it right then. I was on my job.

24 Q. You got off work?

25 A. It was late at night when I did.

1 Q. You couldn't do no warrant late at night?

2 A. No.

3 Q. You couldn't go down -- Let me ask you this: The  
4 police department, the last time I checked, I think  
5 they were open 24 hours a day, seven days a week?

6 A. I said a warrant, not no police report.

7 Q. Well, where do you think you go to get it?

8 A. (No response.)

9 Q. Now, did you call 911 on March 24th?

10 A. No, I didn't.

11 Q. Now, you said Donnie -- Donnie stalked you; isn't  
12 that what you said?

13 A. Yes.

14 Q. That's why we are here. That's one of the reasons  
15 why we are here because you said, Donnie stalked  
16 me. Am I right?

17 A. Yes.

18 Q. You have been with this man for seven years. Am I  
19 right about this?

20 A. We wasn't together when none of these incidents  
21 happened. I had left him.

22 Q. Now, I want you to look the ladies and gentlemen of  
23 the jury in the eyes with a straight face.

24 A. (Witness complies.)

25 Q. Did you play any role in this relationship?

1 A. I didn't play no roles in the relationship.

2 Q. Going off the base -- You kept letting him back all  
3 of these years even though he was a crack addict  
4 you contend; am I right?

5 A. I kept telling you I did it because he was  
6 threatening me.

7 Q. You kept letting him back even though you contend  
8 he was physically abusing you all of these years;  
9 am I right?

10 A. He was begging to come back, too. And he was  
11 threatening me.

12 Q. And you kept letting him back even though he was  
13 physically abusing your kids all of these years?

14 A. Yes.

15 Q. And you kept letting him back even though he was  
16 stalking you all of these years?

17 A. He was on my premises. I wasn't bothering him. He  
18 was bothering me on my premises. I wasn't  
19 bothering him. I wasn't going nowhere near him.

20 Q. I tell you what: Help us out, if you will. I want  
21 to know, and I know the ladies and gentlemen of the  
22 jury want to know, and I don't mean to embarrass  
23 you. Was it the sex?

24 A. No. No.

25 Q. It wasn't the sex?

1 A. No. No, it wasn't.

2 Q. Was it money?

3 A. No. Because he didn't have no money because the  
4 crack was getting it.

5 Q. Crack getting his money?

6 A. Yes.

7 Q. Sex was bad. Why did you stay?

8 A. I was at my own house. He was at my house.

9 I wasn't living with him. He was living with  
10 me.

11 Q. From what I'm understanding, this relationship  
12 didn't have one redeeming quality about it?

13 A. I told you earlier he said he didn't want to see me  
14 with nary another man. That's what I told you. He  
15 kept coming back to me.

16 Q. Broke all the time, sex bad, stalking, batterer,  
17 won't marry you?

18 A. He have asked me to marry me. We've been engaged  
19 twice. I broke it.

20 Q. Sneaking off with your kids.

21 I draw a line with positive and negative. And  
22 if what you say is true, there wasn't one redeeming  
23 quality about this man that kept you interested in  
24 him over the last seven years.

25 Is that rational staying in a relationship with

1       somebody that ain't doing you a bit of good?

2       A.   Somebody threatening you, you don't have a choice.

3       Q.   He been threatening you the past seven years and  
4       not one time -- Are you still breathing this air  
5       right now?

6       A.   Yeah, I'm still breathing the air.   Because I was  
7       running for my life, that's why.

8       Q.   You've been running for your life the last seven  
9       years because you're telling us he has been abusing  
10      you the last seven years?

11      A.   He have been abusing me the last seven years.   He  
12      started in '98.

13      Q.   That doesn't make sense.   Now, I'm going to have  
14      witnesses to take the stand.

15                You know Donnie's mama?

16      A.   Yes.

17      Q.   That ain't one of them.

18                You know Donnie's sister Lynn?

19      A.   Yes.

20      Q.   You know Robert; Lynn's boyfriend Robert?

21      A.   Yes.

22      Q.   Isn't it true that you have gone to Lynn's place,  
23      Carrie's place and picked up Donnie's stuff and  
24      moved him back in?

25      A.   I'm going to tell you what happened.

1 Q. Answer my question, yes or no.

2 A. Yes.

3 Q. And you have done it many times, haven't you?

4 A. I ain't did it over twice.

5 Q. Twice. Crack addict is out your hair; is that not  
6 right? Isn't that right at one time he was out  
7 your hair? Is that not right?

8 A. He came back to my house asking me to take him over  
9 there to get his clothes because he had to go to  
10 work. That was this year after he got out.

11 Q. And then you moved him on back in?

12 A. I didn't move him back in. I told him don't go  
13 over there and get them clothes if he wasn't going  
14 to do right.

15 I'm going to do right this time; I promise you.

16 Q. And you let him back?

17 A. Yes, I did. I wasn't bothering Donnie. He came  
18 over and asked me to take him to get his clothes.  
19 I wasn't bothering Donnie.

20 Q. Let me ask you this: Do you like R and B music?

21 A. I don't understand.

22 MRS. PENN: I object; irrelevant.

23 Q. You ever heard of Keith Sweat?

24 A. Yes.

25 Q. Well, let me ask you this: Donnie about as good as

1 Keith Sweat, isn't he? He begged you all these  
2 years and you took him back?

3 A. His people don't like me anyway. I found that out.  
4 They are two-faced.

5 Q. His people are two-faced?

6 A. Yes, they is.

7 Q. I've taken you over your testimony, and it looks  
8 like the only person that's two-faced is you.

9 A. I am not two-faced. It's David Donnie Williams.  
10 He talk about his people to me and then go back to  
11 them and tell lies on me.

12 Did he ever tell you when his sister and mom  
13 called over there to see if he was there to tell  
14 them he wasn't there?

15 MR. AUSBORN: I move to strike that as  
16 nonresponsive.

17 THE COURT: Granted. Let's move it along.

18 MR. AUSBORN: Thank you.

19 Q. Now, the incident where Donnie picked your daughter  
20 up, is that the eight year old?

21 A. Yes.

22 Q. Isn't what happened on that date, you left your  
23 daughter out on the porch unattended?

24 A. No, I didn't.

25 Q. And Donnie saw her sitting out on the porch in a

1 bad area and was concerned about her safety and  
2 picked her up because he was concerned about her  
3 welfare. Is that not right?

4 A. No, I didn't leave her unattended. I was coming to  
5 pick her up and Donnie was trespassed off my  
6 property.

7 He wasn't supposed to be down there. He saw my  
8 daughter standing by my door, and we pulled up to  
9 get her, and I believe Donnie done got her. And  
10 when she got off the bus, my daughter told me she  
11 was knocking on the door.

12 Q. Now, let me ask you this here: You weren't there?

13 A. No, I wasn't. It was two minutes later.

14 Q. You weren't there when the daughter ran to the car  
15 because she was scared; Mama ain't here?

16 MRS. PENN: Your Honor, I object. He is  
17 testifying. If he wants to ask a question, he can  
18 ask a question, but don't testify.

19 THE COURT: Sustained.

20 Q. You weren't there, were you?

21 A. I was coming to pick her up because I couldn't live  
22 there. I couldn't live there in my house at the  
23 time. That's why I wasn't there to pick her up on  
24 time. I have to go pick her up. It was two  
25 minutes after she had got off the bus, 2:52.



1 He was trespassed away. He wasn't supposed to  
2 be there. And that wasn't his child to pick up.  
3 She told me, I wasn't scared, Mama; David told me  
4 to get in the car, and I got in the car.

5 He had no business being there at the time no  
6 way. He wasn't living there at the time.

7 Q. You keep saying trespass. Ain't nobody trespassed  
8 from your property, is there?

9 A. I know what he did. You can get my friend up here  
10 and testify for me. He'll do it.

11 Q. You talk about your friend?

12 A. He supposed to be my friend; he's my landlord.

13 Q. I know Mr. Jernigan. He is a person of integrity.  
14 And you played on that integrity, didn't you?

15 A. No, I didn't.

16 Q. And every time you went to Mr. Jernigan and said,  
17 Mr. Jernigan, Donnie Williams is threatening me and  
18 abusing me, he believed you. He believed you,  
19 didn't he?

20 Not one time did you tell him about all of the  
21 times that you were picking up his stuff and  
22 bringing him back?

23 A. That was this year, the only time, 2004, when he  
24 first got out. All the other time I don't know  
25 nothing about it because I didn't go.

1 Q. You didn't tell him about all through the years  
2 that y'all would break up and make up and break up  
3 and make up?

4 A. That's with him coming to my property. I wasn't  
5 going around him, period. He was coming to my  
6 property. I was in my house on my property. I  
7 wasn't bothering David Donnie Williams.

8 Q. You said there wasn't nothing redeeming about him;  
9 crack addict, abuser, stalker, harasser, broke.

10 Let me ask you this: You must have been doing  
11 something real good to get Donnie to come back?

12 A. He said I was a good woman. He didn't tell you  
13 that, did he?

14 Q. Good woman?

15 A. Yes. He said I was the best woman he ever have.  
16 Yes, he have told me this.

17 Q. Look at the ladies and gentlemen of the jury.  
18 Look them in the face.

19 A. (Witness complies.)

20 Q. The reason we are here.

21 MRS. PENN: Your Honor, if he is going to ask  
22 her a question --

23 MR. AUSBORN: Let me ask a question:

24 Q. Seven whole years you felt the need to try to prove  
25 to Donnie that you was a good woman?

1 A. I didn't try to prove it to Donnie. Donnie was  
2 behind Callie.

3 Like I said earlier, I was sitting on my step  
4 in June of '97. Donnie was with his nephew. I  
5 wasn't looking for no man.

6 Q. You weren't looking for no man?

7 A. No, I sure wasn't. I had just got over a  
8 relationship with my baby daddy. I wasn't looking  
9 for no man. He was at Callie. I was at my own  
10 house.

11 Q. That crack addict meet your needs?

12 A. No, he had no needs for me. He had nothing to give  
13 me. When I asked him for a dollar, he couldn't  
14 give me a dollar. No. He used to come to me and  
15 ask me for money.

16 Q. That broke man meet your needs?

17 A. No.

18 Q. That physical batterer/abuser meet your needs?

19 A. No.

20 Q. That stalker meet your needs?

21 A. No.

22 Q. Yet you stayed with him seven years?

23 A. Because he was threatening me. I had no other  
24 choice. He would stay out watching my house at  
25 night.

1 Q. Now, when you say you didn't have no other choice,  
2 do you believe that?

3 A. I believe that man will kill me for real, yes. He  
4 have a bad record. I didn't know that until I got  
5 involved with him.

6 Q. Okay. Now, the same individual who you say you  
7 believe will kill you, you can't show us one  
8 photograph to where he ever assaulted you, not one?

9 MRS. PENN: Your Honor, asked and answered.

10 THE COURT: Sustained.

11 MR. AUSBORN: I'm going to wrap it up. I'm  
12 going to mark this as Defendant's Exhibit 1.

13 (Defendant's Exhibit No. 1 was  
14 marked for identification.)

15 Q. That's the offense report, March 25th, '04. You  
16 signed that, didn't you? Is that your signature?

17 A. I can't read that far. I can't see what's on the  
18 paper.

19 Q. Let me help you. I'm showing you now what is  
20 tendered to be marked Defendant's Exhibit 1.  
21 That's the offense report for March 25th, 2004.  
22 I'll let you examine the front and back of that.

23 A. Yes, he did this. That's what I told them.

24 Q. You stated that Donnie had been harassing you March  
25 25th; is that right?

1 A. Yes, as I was getting on my job.

2 MRS. PENN: Your Honor, may we approach  
3 (Whereupon a Bench conference was held  
4 outside the hearing of the reporter and the  
5 jury.)

6 Q. (By Mr. Ausborn:) Now, this Defendant's Exhibit 1,  
7 the offense report for March 25th, '04, is this a  
8 complete and accurate representation of the report  
9 you filled out on March 25th?

10 A. Yes.

11 Q. That's your signature down at the bottom?

12 A. Yes, that's my signature.

13 Q. Lieutenant James Finney?

14 A. Yes.

15 Q. Who does he work with?

16 A. Police department.

17 Q. Union Springs Police Department?

18 A. Yes.

19 Q. Why didn't you get a warrant and affidavit from the  
20 police? You were right down there with them?

21 A. I didn't know they do all of that. I didn't know  
22 that.

23 Q. You were right there with the police and didn't get  
24 a warrant?

25 A. I didn't know I could do a warrant at the police

1 station. I didn't know that.

2 Q. But you knew you could get it from your buddy,  
3 though, didn't you; you knew that?

4 A. He the circuit clerk. He supposed to write me out  
5 one.

6 Q. Mr. Jernigan don't pack a gun, do he?

7 A. No, I don't think so.

8 Q. Who you think is in the best position to be able to  
9 protect you from a person who has threatened to  
10 kill you for the last seven years, the clerk of  
11 court, who don't pack a gun, or the lieutenant, who  
12 packs a gun?

13 A. Lieutenant.

14 Q. Does that make sense that you didn't get protection  
15 from the lieutenant that you were right down there  
16 in front of?

17 A. I didn't know that at the time. I was very scared.

18 Q. You were scared at the police station right there  
19 in front of the lieutenant?

20 A. He had already followed me to the police station.  
21 And I was scared to get out the car.

22 Q. Let me ask you: Was he there when you met with the  
23 lieutenant?

24 A. No. Because we left. We went around town to  
25 follow the police; we blowed. And I was afraid to

1 get out.

2 What he said he was going to do to me, he was  
3 going to do it when I was coming out the gate at  
4 work. He came up to me and Glads (phonetic) was  
5 the guard that night. And he supposed to show a  
6 picture ID, and he wasn't at work that day, anyway.

7 Q. You agree that it is kind of ridiculous to be  
8 scared when you are in front of a lieutenant who's  
9 packing heat?

10 A. Well, I didn't know they would do a warrant. I  
11 didn't know that. Because if I did, I would have  
12 did it.

13 MR. AUSBORN: Your Honor, we offer into  
14 evidence Defendant's Exhibit 1.

15 MRS. PENN: The best evidence of that is what  
16 she testified.

17 MR. AUSBORN: Any objection?

18 MRS. PENN: Yeah, I am objecting. The best  
19 evidence --

20 MR. AUSBORN: It's been authenticated.

21 THE COURT: Admitted.

22 (Defendant's Exhibit No. 1 was offered  
23 and received into evidence.)

24 MR. AUSBORN: Permission to publish, Your  
25 Honor.

1 THE COURT: Granted.

2 (Whereupon Defendant's Exhibit No. 1

3 was published to the jury.)

4 (Defendant's Exhibit No. 2 was

5 marked for identification.)

6 Q. (By Mr. Ausborn:) Now, Defendant's Exhibit Number  
7 2, this is the March 30th, 2004, incident report  
8 for criminal mischief.

9 I am going to ask that you examine that  
10 document.

11 A. (Witness complies.)

12 Q. Is that your signature ton back?

13 A. Yes, that's my signature.

14 Q. Does this document accurately reflect the incident  
15 report that you filled out on March 30, 2004?

16 A. Repeat that again. I didn't hear what you said.

17 Q. Does this incident report dated March 24th (sic)  
18 for criminal mischief, signed by you on the rear,  
19 does it accurately reflect what you communicated to  
20 law enforcement on that date?

21 A. I still don't understand.

22 Q. You told them what was in this report; right?

23 A. Yes.

24 Q. Now, did you fill in criminal mischief or did the  
25 officer fill that?



1 A. The officer did because I told him what happened.

2 Q. You know what the definition of criminal mischief  
3 is?

4 A. Not exactly.

5 Q. Uh-huh (affirmative response). Stalking ain't  
6 criminal mischief, is it?

7 A. I don't understand what you are saying. What you  
8 saying?

9 Q. The type of incident offense is labeled criminal  
10 mischief; isn't that right? Isn't that what it  
11 says?

12 A. Yes, yes.

13 Q. That's on the first page; isn't that right?

14 A. Yes.

15 Q. And on the second page, you go into an explanation  
16 that Donnie was trespassed from your residence,  
17 keeps coming around harassing you and stalking you.

18 Isn't that what you wrote out?

19 A. The officer wrote it out and I signed it. I told  
20 him what happened, yes.

21 Q. And did you read it and sign it?

22 A. Yes, I signed it.

23 Q. Were you under the influence of narcotics?

24 A. No.

25 Q. Alcohol or anything --

1 A. No. I don't drink.

2 Q. Before you signed off of this --

3 A. No, I don't drink.

4 Q. Had no problem reading it?

5 A. No.

6 Q. You didn't tell him about no criminal mischief, did

7 you?

8 A. Tell who about that?

9 Q. The officer.

10 A. That's what he wrote on the paper.

11 Q. Huh?

12 A. He wrote that on the paper.

13 Q. You didn't swear out a warrant against him for

14 criminal mischief, did you?

15 A. To who?

16 Q. Against David.

17 A. To the officer?

18 Q. Did you swear out a warrant against David for

19 criminal mischief, too?

20 A. Him?

21 Q. Are we here on a criminal mischief case?

22 A. I guess so.

23 Q. We are not here on a criminal mischief case, are

24 we?

25 A. I don't know.

1 Q. You know that one of the charges is stalking, don't  
2 you?

3 A. Oh, yes.

4 Q. You know that the other one is harassment, don't  
5 you?

6 A. Yes.

7 Q. Criminal mischief ain't one of them, is it?

8 A. I didn't put that on there. The officer put that  
9 on there.

10 Q. Now, Officer N. Williams and Officer Jay Horne,  
11 Junior, where do they work at?

12 A. The police department.

13 Q. Union Springs Police Department?

14 A. Yes.

15 Q. You told them Donnie had been stalking you?

16 A. Yes.

17 Q. And had been harassing you?

18 A. Yes.

19 Q. Trespassing against you?

20 A. Yes.

21 Q. Your person and your residence?

22 A. Yes.

23 Q. Where is your trespassing warrant?

24 A. I don't know. I don't have it.

25 Q. I notice in the offense report -- Did you give any

1 date? Is there a date in here when he was  
2 allegedly doing all of this? There ain't no date  
3 plugged in here, is there?

4 A. I didn't write that.

5 Q. Is there a date in here?

6 A. It's supposed to be on the front page.

7 It's supposed to be.

8 Q. Let's see. Date and time of this report. It's got  
9 a date that the report is given. Am I right about  
10 that? You agree with that; right here in the left  
11 corner?

12 A. Yes, that's what time it happened. Yes.

13 Q. Now, that's the date and time of the report?

14 A. Yes, police report.

15 Q. That ain't the date and time of the alleged  
16 incident, is it?

17 A. That's what I told had happened, yes, that on the  
18 paper.

19 Q. Did you tell the officer at that time that you were  
20 fearful of your safety, help me get a protection  
21 from abuse?

22 A. Yes, I told him I was afraid. I told him.

23 Q. Did you ask him, how can I get a protection order?

24 A. No, I didn't ask him that.

25 Q. You knew about a protection order. You said that

1 earlier, that you knew about it. You knew about  
2 it, didn't you?

3 A. Yes.

4 Q. You didn't want to really be protected from Donnie  
5 Williams, did you?

6 A. When someone leave them alone, that means he should  
7 leave me alone. I didn't want to have to go  
8 through all that. He should have left me alone. I  
9 did it the easy way; I left him home.

10 Q. You liked Donnie chasing behind you, didn't you?

11 A. No, I don't.

12 Q. It made you feel like a real woman, didn't it?

13 A. No.

14 Q. Didn't it?

15 A. No.

16 Q. It felt good to be wanted, didn't it?

17 A. No.

18 Q. After all you hadn't been involved in another  
19 relationship for the last seven years; isn't that  
20 right?

21 A. I was afraid to be in another relationship. He  
22 said he would kill me and the man both. You would  
23 be afraid if a man tell you that. You don't know  
24 what he got on when he come up there; especially on  
25 crack. He might have a click in a minute and don't

1 know what he doing.

2 Q. You ever turned in this crack addict?

3 A. The police -- every police in this town know about  
4 David Donnie Williams. I don't have to have no  
5 proof to show them.

6 MR. AUSBORN: Your Honor, I offer into evidence  
7 Defendant's Exhibit 2.

8 THE COURT: Any objection?

9 MRS. PENN: No.

10 THE COURT: Admitted without objection.

11 MR. AUSBORN: Permission to publish, Your  
12 Honor?

13 THE COURT: Go ahead.

14 (Defendant's Exhibit No. 2 was offered,  
15 received into evidence, and published  
16 to the jury.)

17 Q. You gave a statement to the Union Springs Police  
18 Department; is that right?

19 A. Yes.

20 Q. Now, did you give that statement on April 17th,  
21 2004?

22 A. Yes, to the police department.

23 (Defendant's Exhibit No. 3 was  
24 marked for identification.)

25 Q. I am going to show you what's marked Defendant's

1 Exhibit 3 and ask you to look at that and see if  
2 that's correct?

3 A. Yes, I wrote this. This is my handwriting.

4 Q. Now, look on page 3 of that exhibit and tell me  
5 whether or not that statement is signed.

6 A. Yes, I signed that.

7 Q. Would you agree that that statement accurately  
8 reflects everything that you told them on April  
9 17th, 2004?

10 A. Yes.

11 Q. Let me get that back from you. Thank you so much.  
12 You sure about that?

13 A. Yes, everything happened that I wrote on the paper.

14 Q. Now, when you wrote this statement out, how many  
15 officers was present?

16 A. Cherlyn Dean is the one that gave me the paper to  
17 write it down.

18 Q. Who did?

19 A. Cher Dean. That's the only one that was in there  
20 at the time.

21 Q. Only one?

22 A. Yes, that I saw then.

23 Q. Now, you knew if you juiced up this statement, you  
24 figured I'll probably get some attention out of it,  
25 so you put stuff in it that really didn't happen.

1           Isn't that what you did?

2           A.   Everything I have in that police report happened.  
3           Everything happened.

4           Q.   Now, do you have a witness that's going to come  
5           forth other than small kids or your daughter that's  
6           going to back you up on April 17th?

7           A.   Yes. My 14-year-old son was around me right there,  
8           and I think Anthony Blake Williams was in the car  
9           with David Williams when it happened.

10          Q.   Now, let me ask you this: Have you talked to your  
11          son about this case? Have you sat down and talked  
12          to the kids and given them an idea why you are back  
13          and forth in court?

14          A.   I have told them what was going on and not to be  
15          afraid when they get up there, just to tell what  
16          they saw happen.

17          Q.   You talked to your child about his testimony,  
18          didn't you?

19          A.   No.

20          Q.   Didn't you talk to him and tell him what they  
21          needed to say?

22          A.   They told me to ask him if he remembered what  
23          happened. And he said, yes.

24          Q.   Did you tell him what to say?

25          A.   I didn't tell him what to say.



1 Q. Did you rehearse his testimony with him?

2 A. No, I didn't.

3 Q. Let me ask you this: We are talking about  
4 something way back in April, and this is November?

5 A. Yes.

6 Q. May, June, July, August, September, October,  
7 November, seven whole months. Seven is a good  
8 number?

9 A. Yes.

10 Q. Seven years with Donnie and seven years after this  
11 incident. Seven is your lucky number.

12 Let me ask you this: You telling us you didn't  
13 have to talk to these kids about what happened?

14 A. No, I didn't talk to them.

15 Q. About an incident that occurred seven months  
16 earlier?

17 A. No, I didn't.

18 Q. You didn't?

19 A. No.

20 Q. Let me ask you this here: In order for you to come  
21 forth today, have you met with anybody to talk  
22 about this case?

23 A. No, I didn't.

24 Q. Mrs. Penn, have you met with Mrs. Penn about this  
25 case?

1 A. Yes, I talked to her.

2 Q. Have you met with the investigators about this  
3 case?

4 A. I haven't talked to them since I did the police  
5 report.

6 Q. What about the officers?

7 A. I haven't talked to them since I did the police  
8 report.

9 Q. You are telling us the only person you met with in  
10 anticipation of your testimony was Mrs. Penn?

11 A. Yes, that's it.

12 Q. That's the only person you talked to about it?

13 A. Yes.

14 Q. Did she go over your testimony with you?

15 A. Yes.

16 Q. You going to do just what she told you to do, what  
17 y'all talked about?

18 A. Yeah, she told me, yes.

19 Q. And that's exactly what you are going to do today,  
20 you are going to testify just like she told you to.  
21 Am I right about that?

22 A. Yeah. But she didn't tell me to tell no lie. I'm  
23 telling the truth. She told me to tell what  
24 happened, and I'm telling what happened.

25 MR. AUSBORN: Your Honor, I offer Defendant's

1 Exhibit 3.

2 THE COURT: Any objection?

3 MRS. PENN: No.

4 THE COURT: Admitted.

5 MR. AUSBORN: Permission to publish?

6 THE COURT: Granted.

7 (Defendant's Exhibit No. 3 was offered,  
8 received into evidence, and published to  
9 the jury.)

10 Q. (By Mr. Ausborn:) Now, the warrant and affidavit  
11 that you swore out in these cases, you gave no  
12 details on either one of the warrant and  
13 affidavits?

14 A. Repeat what you said.

15 Q. You didn't give no details -- Did you sign the  
16 warrant and the complaint for harassment?

17 A. Yes, I did.

18 Q. Now, as I close, look at the ladies and gentlemen  
19 of the jury now.

20 A. (Witness complies.)

21 Q. You know and I know and they need to know, you  
22 could have handled this a whole lot better and we  
23 wouldn't be here now, isn't that true?

24 A. When you threatened by a person, you can't do no  
25 more.

1 Q. You threatened by a person the first time, the  
2 second time you cut them off, don't you? That's  
3 what a rational person would do; they would cut  
4 them off, wouldn't they? Wouldn't they?

5 A. Yes. But when they keep coming back begging you to  
6 take them back and threatening you. That's the  
7 problem.

8 Q. And when you are beat up by a person the first  
9 time, the second time, a rational person would cut  
10 them off, wouldn't they?

11 A. Yes, that's true.

12 Q. And when that person beats up on your kids, who you  
13 as a parent have a legal and moral obligation to  
14 protect, you cut them off, that's what a rational  
15 personal would do, wouldn't they?

16 A. Yes.

17 Q. And when you are stalked by a person the first  
18 time, the second time and many, many other times,  
19 you call 911, don't you?

20 A. Yes. When you are afraid, you have no choice but  
21 to do what you were doing.

22 Q. And that's what a rational person does, isn't it?

23 A. Yes.

24 Q. You didn't call 911?

25 A. No.

1 Q. And when you are in fear of your safety because a  
2 person has told you over and over again, I'm going  
3 to kill you, over and over again, this same person  
4 you contend has battered you many times, numerous  
5 times over the years, you go to the courts and you  
6 get protection from that person. Isn't that what a  
7 rational person does?

8 A. That's true.

9 Q. You didn't do that, did you?

10 A. No.

11 Q. And when you are right there in front of law  
12 enforcement who are packing heat, Glocks,  
13 Beretta's, trained with many, many years of  
14 expertise on firearms, and you got a person who is  
15 threatening to kill you, been stalking you only  
16 minutes before you got to the station, you will  
17 swear out a warrant on them. That's what a  
18 rational person does, isn't it?

19 A. Yes.

20 Q. You didn't do that, did you?

21 A. No.

22 Q. Crack addict, smoking drugs, seven years of hell  
23 around you and your kids, you cut them off. That's  
24 what a rational person does, isn't it?

25 A. Yes. But when they keep coming back and begging

1           you, promises, that's what I am trying to get you  
2           to see. He kept coming to my residence. I wasn't  
3           going to him trying to contact him. He kept coming  
4           to where I was at.

5       Q.   Now, rational person who has zero tolerance for  
6           drugs, I don't care what it is, crack, marijuana,  
7           heroin, LSD, meth, you don't chauffeur somebody  
8           around to get drugs, do you/, a rational person  
9           don't do that, do you?

10      A.   I wasn't doing that.

11      Q.   Didn't you testify that you were going to take him  
12           to get the drugs?

13      A.   I didn't say that.

14      Q.   The ladies and gentlemen of the jury will remember  
15           your testimony.

16      A.   I didn't take him to get no drugs. No, I didn't.  
17           I said a jersey, a jersey, what to wear, a jersey.

18      Q.   A rational person, a man shacking up with you over  
19           your kids, whatever example that may be, beating  
20           you up, stalking you, eating up food in the house,  
21           not paying bills, not even a cable, you kick them  
22           out and you say, you ain't coming back. Isn't that  
23           what a rational person does?

24      A.   When they break up in your house and you don't let  
25           them in there, what other choice have they got?

1 That's what David Donnie Williams was doing.

2 THE COURT: Have you got a new question? We've  
3 had that last one 30 times. Let's go.

4 Q. Now, finally: You have not dealt justly with this  
5 situation?

6 A. I did my part. I kept going to the police station  
7 doing what I was supposed to do. I didn't know  
8 what else to do. I have to see about my kids going  
9 to school and stuff. I didn't know nothing else to  
10 do but go to the police station and do a report.

11 Q. You could have gotten out of the relationship?

12 A. I had gotten out of the relationship. He was  
13 harassing and stalking me. I was out of this  
14 relationship. He wouldn't leave me alone.

15 THE COURT: Redirect.

16 MRS. PENN: Your Honor, please forgive me. I  
17 almost don't want to ask any more questions, but I  
18 am going to ask a few.

19 REDIRECT EXAMINATION

20 BY MRS. PENN:

21 Q. We agree that it wasn't rational for all of that?  
22 Every 30 or 40 times he asked you that, we agree  
23 that it wasn't rational; is that correct?

24 A. Okay.

25 Q. Does it mean that David Donnie Williams didn't do

1           what you said he did on March 25th, April 17th, and  
2           March 30th?

3       A.     Yes.

4       Q.     Did he do those things to you?

5       A.     Yes.   Everything I said he did, he did it.

6       Q.     You agree you weren't rational?

7       A.     Yes.

8       Q.     And are you rational now?

9       A.     No.

10      Q.     Are you following through with the charges you  
11           filed against David Donnie Williams for harassing  
12           and stalking you?

13      A.     Yes.

14      Q.     You are not backing down from that, are you?

15      A.     No, I'm not.

16      Q.     Each time he called you irrational, he did it?

17      A.     Yes, he did.

18      Q.     Can you tell the ladies and gentlemen of the jury  
19           if everything you filed on this police report going  
20           back to 2001 was correct?

21      A.     Yes, it was.

22      Q.     Donnie did all of these things to you.

23           This is a serious case to you, would you agree?

24      A.     Yes.   My life was in danger.

25      Q.     Was there anything funny?



1 A. Ain't nothing funny. My life was very important to  
2 me. I have kids to raise. And my family love me  
3 just the way David Donnie Williams' family love  
4 him. They help him out in his lies, hold him up  
5 and stuff.

6 Q. Let me ask you: He classified his client as a  
7 crack addict, abuser, crack addict, broke. That is  
8 true, isn't it?

9 A. Yes.

10 Q. And everything is true, isn't it?

11 A. Yes.

12 Q. Including a stalker?

13 A. Yes.

14 Q. Let me ask you about in 2001 where he says you  
15 filed false charges.

16 Is that your understanding of what they said  
17 happened in court, that you filed false charges?

18 MR. AUSBORN: Objection.

19 THE COURT: She can answer that.

20 A. Repeat that again.

21 Q. Did they tell you in 2001 that you had filed false  
22 charges?

23 A. No.

24 Q. Have you ever been charged with making a false  
25 report at the police department?

1 A. No.

2 Q. Have you ever been convicted of doing that?

3 A. No.

4 Q. So you didn't file any false charges in 2001, did  
5 you?

6 A. No, I didn't.

7 Q. Everything you said in that report, was true,  
8 wasn't it?

9 A. That's true.

10 Q. He asked you about a protection from abuse. You  
11 didn't do one of those, did you?

12 A. No, I didn't know about that.

13 Q. Tell me what it is.

14 A. Something about getting protection from -- keeping  
15 a man to bother you.

16 Q. Where do you go to do that?

17 A. I didn't know where to go to do that.

18 Q. So when you said you knew what it was but you  
19 didn't do it, you didn't know what it was, did you?

20 A. Just what I just said.

21 Q. When you did that trespass warrant, did you  
22 consider --

23 A. That's supposed to keep a person off from around  
24 your property, around you, period.

25 Q. So as far as you are concerned, you did the

1 protection from abuse; correct?

2 A. Yes.

3 Q. And did the trespass from your property tell him to  
4 stay away from you?

5 A. Yes.

6 Q. That's what you signed?

7 A. Yes.

8 Q. And as far as you are concerned, that's a  
9 protection from abuse?

10 A. Yes.

11 Q. Does the same thing?

12 A. Yes.

13 Q. Do you know how many times you called police and  
14 filed reports on David Donnie Williams?

15 A. I can't remember. It's been several times. I  
16 can't remember.

17 Q. Not just these charges?

18 A. There was more times I had called.

19 Q. And just because that paper says criminal mischief,  
20 you didn't go up there and tell them David Donnie  
21 Williams committed criminal mischief; you told them  
22 what happened?

23 A. I told them what happened.

24 Q. And whatever they wrote out on there, you signed  
25 your name?

1 A. Yes.

2 Q. And you don't have any idea what criminal mischief  
3 is, do you?

4 A. Not really.

5 Q. Tell me what criminal mischief is.

6 A. I don't know.

7 Q. You didn't file a criminal mischief charge against  
8 David Williams, did you?

9 A. No.

10 Q. You filed charges for stalking you, harassing you,  
11 grabbing on you?

12 A. Yes.

13 Q. And threatening to kill you?

14 A. Yes.

15 Q. Isn't that what you filed charges against David  
16 Donnie Williams for?

17 A. Yes.

18 Q. Isn't that what you told the police about?

19 A. Yes.

20 Q. How many times have I talked to you about this  
21 case?

22 A. I think two times.

23 Q. When was the first time?

24 A. It was last Tuesday.

25 Q. Did I tell you anything to do in this case?

1 A. No, you didn't.

2 Q. When was the second time I talked to you about it?

3 A. This morning.

4 Q. Did I talk to you any time between then and this  
5 morning?

6 A. No.

7 Q. Did I tell you anything to say up here on this  
8 stand?

9 A. No, you didn't.

10 Q. Did I tell you to tell the truth?

11 A. You told me to tell the truth; tell them what  
12 happened.

13 Q. Is that the only thing I told you to say in this  
14 case?

15 A. Yes.

16 Q. He asked you about making a warrant at the police  
17 department, and you said you didn't know anything  
18 about it; is that right?

19 A. About a warrant?

20 Q. A warrant at the police department.

21 A. I didn't know nothing about it at the police  
22 department.

23 Q. Did you know that the police officers do not issue  
24 warrants?

25 A. I knew that.

1 MR. AUSBORN: I object to that.

2 Q. That's why you didn't?

3 THE COURT: She said, do you know they do not  
4 issue warrants at the police department. And she  
5 said, yes.

6 MR. AUSBORN: She is not in a position to  
7 answer that question. She never sought it from the  
8 police department.

9 THE COURT: If she knows they don't issue it  
10 from there, I think she can answer the question.

11 MR. AUSBORN: Okay.

12 Q. (By Mrs. Penn:) Where did you go to have the  
13 warrant issued?

14 A. What kind of warrant?

15 Q. Any warrant that you signed?

16 A. I know I went on March 25th.

17 Q. Where did you go?

18 A. To the circuit clerk's office.

19 Q. And is that your understanding of where you are  
20 supposed to go when you want a warrant done?

21 A. Yes, that was for trespassing.

22 Q. And you don't have a copy of that document with  
23 you, do you?

24 A. Not with me.

25 Q. Doesn't mean it wasn't done; is that correct?

1 A. No, it doesn't mean it wasn't done.

2 Q. Mr. Jernigan would have a copy of that, wouldn't  
3 me?

4 A. Yes.

5 MRS. PENN: We will see about getting that in  
6 here.

7 Q. The defense has introduced police reports and the  
8 jury has them in their possession. They have  
9 already been introduced into evidence; is that  
10 correct?

11 A. Yes.

12 Q. Did you tell the police officer what happened on  
13 each one of those cases?

14 A. Yes, I did.

15 Q. Let me ask you something else. Defendant's Exhibit  
16 Number 2, is that your writing in the narrative  
17 part of that?

18 A. That's not my writing. A police officer wrote it  
19 for me, and then I signed it. I read it first  
20 before I signed it.

21 Q. Does that say every word -- Does this narrative  
22 have every word in it that you told the police?

23 A. Yes.

24 Q. Does it have every word that you told them in there  
25 that happened?

1 A. Yes.

2 Q. What about the one on the 24th? This is Exhibit  
3 Number 1. Is that your writing?

4 A. No, that's not my writing there. I signed it.

5 Q. And that's what you told them; right?

6 A. Yes.

7 Q. Let me ask you something else. Did you walk into  
8 the police department and say: On 3/24/04 about  
9 1:15 a.m., Mrs. Williams stated --

10 You didn't say that, did you?

11 A. No.

12 Q. They summarized what you said, didn't they?

13 A. Yes.

14 Q. So this is not every word that you said?

15 A. Okay.

16 Q. Same thing happened in Defendant's Exhibit 2?

17 A. (Witness nods affirmatively.)

18 Q. They summarized what you said. That's not what you  
19 said, is it?

20 It's a narrative of what you said, but that's  
21 not exactly what you said?

22 A. Okay.

23 Q. Is it? Is that right?

24 A. Yes.

25 Q. Just a moment. Let me ask you something: Were you



1 anywhere around David Donnie Williams when he was  
2 arrested on these charges?

3 A. No.

4 Q. I think the defense attorney eluded that y'all were  
5 together --

6 MR. AUSBORN: Your Honor, this is improper  
7 examination that has not been offered into  
8 evidence. And she is restricted on redirect to the  
9 examinations, she cannot raise a new line of  
10 questioning.

11 THE COURT: Y'all approach.

12 (Whereupon a Bench conference was held  
13 outside the hearing of the reporter and  
14 the jury.)

15 Q. Thank you, Callie. That's all the questions I  
16 have.

17 THE COURT: Recross.

18 MR. AUSBORN: Nothing further.

19 THE COURT: Thank you. You may step down.  
20 (Whereupon the witness left the stand.)

21 THE COURT: Let's take a lunch break until  
22 1:30. Keep in mind the recess instruction. Come  
23 back to the jury room at 1:30.

24 (Whereupon the jury left the courtroom, a  
25 lunch recess was taken by all, after which

1 the following proceedings were had in open  
2 court:)

3 (Defendant present with counsel.)

4 THE COURT: Bring them in.

5 (Whereupon the jury returned to the jury box,  
6 and the following proceedings were had in open  
7 court:)

8 THE COURT: Ladies and gentlemen of the jury,  
9 has anyone received any information about this case  
10 other than the testimony and exhibits that have  
11 been received at trial?

12 (Negative response from the jury.)

13 THE COURT: Call your next witness.

14 MRS. PENN: The state calls Johnnie Moore.

15 JOHNIE MOORE BAKER COLEMAN

16 having first been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MRS. PENN:

19 Q. I'm going to ask you some questions, and I need you  
20 to answer yes or no.

21 State your name for the Record, please.

22 A. Johnnie Baker. A lot of people know me as Moore.

23 Q. What do you do, Ms. Baker?

24 A. I am a security officer at Wayne Farm.

25 Q. What do you do?

1 A. I'm a security officer from 2:00 until 10:00 at  
2 night.

3 Q. How long have you been performing that job?

4 A. March will be ten years.

5 Q. Do you know David Donnie Williams?

6 A. Not really. Know of him.

7 Q. Can you explain to the ladies and gentlemen of the  
8 jury how it is that you know of him?

9 A. Well, I was born in Union Springs. I guess he was  
10 too; from being around. I knew the face, but I  
11 didn't know a name to put with the face until...

12 Q. Until? I'm sorry. I cut you off.

13 A. Until I started seeing him with Ms. Williams.

14 Q. So at some point you began seeing him with  
15 Ms. Callie Williams?

16 A. Yes.

17 Q. Did you ever see him in the course of your  
18 employment?

19 A. Yes.

20 Q. And how would that be? Is it because he just came  
21 by? Or did he work there? Or tell me how did you  
22 see him in the course of your employment.

23 A. He worked there.

24 Q. Were you working security at the time he worked  
25 there?

1 A. It's been so long, I think so. I think they would  
2 come through the gate together. I had to check  
3 IDs.

4 Q. And at some point in time, did you become aware of  
5 the name David Donnie Williams as it relates to  
6 your job as a security officer at Wayne Farms?

7 A. Yes.

8 Q. Explain to the ladies and gentlemen of the jury  
9 what made you aware of that name in your job as a  
10 security officer.

11 A. Well, security get notes; practically 90 percent of  
12 them on termination, and an employee who has been  
13 terminated and not allowed back on Wayne Farms  
14 premises, we have to post a note inside the guard  
15 shack. That's how I became aware of the name to  
16 put with the person.

17 Q. So in the course of your job, you received a note  
18 that David Donnie Williams was not to be back on  
19 the premises of Wayne Farms?

20 A. Yes, I did.

21 Q. Do you know what month that was?

22 A. I don't remember. It's been a while.

23 Q. Sometime in 2004?

24 A. Yes.

25 Q. And after receiving that note, do you recall seeing

1 David Donnie Williams anywhere on or near the  
2 premises of Wayne Farms?

3 A. Yes.

4 Q. Where did you see him?

5 A. Coming down through the park lot and he stopped as  
6 if to pick someone up on break. And he sat there  
7 for a few minutes and he left.

8 Q. So he didn't pick up anyone?

9 A. The note had not been posted at that time.

10 Q. Tell me how the guard shack is situated as far as  
11 people entering and exiting the plant.

12 Do you have to go through there to get to the  
13 plant?

14 A. Yes. Employees come in -- There is two gates.  
15 They come in the second gate, and they have to come  
16 right past the guard shack in order to enter.

17 Q. And at the time you saw him sitting there, had he  
18 come into the yard to your security booth?

19 A. Not to my booth, no.

20 Q. So he was?

21 A. He came -- He would have to pass the booth  
22 department because they don't allow him parking on  
23 fences. And he came down through there two or  
24 three times. The note got posted, and when he came  
25 through again, I made him aware that he was not



VOL. 2

CR 04-0846

COURT OF CRIMINAL APPEALS NO.

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF Bullock COUNTY, ALABAMA

CIRCUIT COURT NO. CC-2004-144

CIRCUIT JUDGE Hon. L. Bernard Smithart

Type of Conviction / Order Appealed From: Stalking

Sentence Imposed: 38 years

Defendant Indigent: ☒ YES ☐ NO

David Donnie Williams

NAME OF APPELLANT

Hon. Donald E. Spencer 334-269-1934

(Appellant's Attorney)

(Telephone No.)

547 S. Lawrence Street

(Address)

Montgomery, AL 36104

(City)

(State)

(Zip Code)

V.

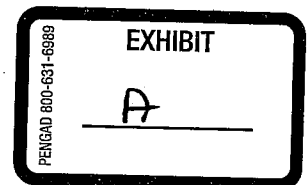
STATE OF ALABAMA

NAME OF APPELLEE

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)



1 allowed on Wayne Farms' premise.

2 Q. Now, tell me about the two or three times that he  
3 came down through there. Did he actually pick  
4 somebody up or did he just sit there?

5 A. He sat there like he was waiting on someone to come  
6 out on break. And I told him that Ms. Williams was  
7 on the line working, and that they could only be  
8 called in case of emergency.

9 Q. So he came down and specifically asked for you to  
10 call Ms. Callie Williams?

11 A. Yes.

12 Q. And at that point you did not call her but told him  
13 you couldn't do that?

14 A. Right.

15 Q. Is that the time after the note was posted, or did  
16 he come back another time?

17 A. No. That was before the note.

18 Q. Before the note was posted.

19 And at some point after that time you got a  
20 note?

21 A. Uh-huh (affirmative response).

22 Q. Do you remember what the substance of that note  
23 was?

24 A. The note was David Donnie Williams was no longer  
25 employed at Wayne Farms, and he was not allowed on



1 the premise.

2 Q. And did he come on the Wayne Farms premises or try  
3 to come on the premises at any time after the note  
4 was posted?

5 A. Yes, he did.

6 Q. And while you were on duty, how many times do you  
7 remember him trying to come in after the note was  
8 posted?

9 A. After the note posted, he got about two times  
10 because the third time, when I seen him cruising  
11 down, I went out to the car where he was and told  
12 him he was not allowed to come on the premise.

13 Q. So this is I count, you help me out, about six  
14 times now that he sat and watched and had no  
15 business over there?

16 A. Right.

17 Q. Didn't get out to go to work?

18 A. No.

19 Q. And didn't pick anybody up?

20 A. No.

21 Q. And didn't say anything to anybody?

22 A. No.

23 Q. But on the third occasion he asked you about  
24 Ms. Callie Williams?

25 A. Yes.

1 Q. After you approached him in the vehicle and told  
2 him that he was not to be on the premises anymore,  
3 did he say anything to you?

4 A. He said --

5 Q. I don't want to know what he said. I just want to  
6 know if he said anything to you.

7 A. He just replied back.

8 Q. Did he leave?

9 A. He left.

10 Q. Did he come on the premises any further while you  
11 were on duty?

12 A. Not on my shift.

13 Q. And are you aware of any other time he might have  
14 come when you weren't on duty?

15 A. Well, I've heard.

16 Q. I don't want to know what anybody said. I just  
17 want to know --

18 A. I'm not aware. Because when I leave at ten, I'm  
19 gone.

20 Q. Yes, ma'am. I understand.

21 Now that you have told me he did not come back  
22 into the yard, I need to know if you saw him  
23 anywhere in the vicinity of Wayne Farms as it  
24 relates to you seeing him from the guard shack  
25 after you told him not to come back on the

1 premises?

2 A. Yes. Riding around the road, riding around the  
3 street. And that happened several times after I  
4 told him he was not allowed.

5 Q. And I'm sure the ladies and gentlemen of the jury  
6 know where Wayne Farms is, but can you tell me what  
7 else is on that road where he was?

8 A. Um, nothing but some houses. And from the guard  
9 shack I can see the vehicles coming and going. I  
10 have a clear view of them.

11 Q. So he was just passing -- Was it in a back and  
12 forth motion, or did you just see him go by?

13 A. Just cruising by.

14 Q. And can you tell me how many times you would have  
15 noticed that after he had been terminated and was  
16 informed not to be back on the premises?

17 A. Well, several times. I can't --

18 Q. Was it more than five?

19 A. Maybe.

20 MRS. PENN: That's all.

21 THE COURT: Cross.

22 CROSS-EXAMINATION

23 BY MR. AUSBORN:

24 Q. May it please the Court, prosecution.

25 Mrs. Coleman, I represent David Williams, and

1 I'm going to ask you some questions. And if you  
2 don't understand me, let me know, and I'll try to  
3 clarify that for you.

4 How long have you been in law enforcement?

5 A. March will be six years. When I put ten years at  
6 Wayne, I should have put six.

7 Q. Has all of your law enforcement experience been at  
8 Wayne Farms?

9 A. At Wayne Farms, yes.

10 Q. Let's talk about your training, okay.

11 A. Uh-huh (affirmative response).

12 Q. What type of formal training did you go through?

13 A. We had exams, watch tv, tapes.

14 At Wayne Farms we are just guards posted there  
15 to -- it is more so like office work.

16 We don't carry weapons and things at Wayne  
17 Farms, and we don't have to get into any heavy  
18 training. But previously I did take criminology in  
19 Tuskegee because I started to be a police officer  
20 but I changed my mind.

21 Q. Okay. Criminology at Tuskegee, outstanding.

22 Now, six years of law enforcement with Wayne  
23 Farms; is that right?

24 A. Yes.

25 Q. And then criminology at Tuskegee; is that correct?

1 A. Uh-huh (affirmative response).

2 Q. How many hours a week do you work at Wayne Farms?

3 A. I work 40.

4 Q. And that's generally 52 weeks out of a year; is  
5 that correct?

6 A. (Witness nods affirmatively.)

7 Q. And would you agree with me that out of that 52  
8 weeks in a year, you see hundreds, if not  
9 thousands, of people coming back and forth?

10 A. I do.

11 Q. In a year's time; is that correct?

12 A. Yes, I do. Everybody that comes there and is  
13 employed there come by me at one time or another  
14 day after day, and I begin to know all faces.

15 I know immediately if somebody comes through  
16 that gate who doesn't belong in there.

17 Q. Now, who subpoenaed you to be in court today?

18 A. I guess...

19 Q. The State of Alabama subpoenaed you.

20 A. I'm not sure. I have the subpoena.

21 Q. You did get a subpoena?

22 A. Yes, I did.

23 MR. AUSBORN: The Court can take judicial  
24 notice that the defense did not subpoena the  
25 witness.

1 Q. Now, I think you stated on direct examination that  
2 you didn't know Mr. Donnie William previously; is  
3 that right?

4 A. I knew the face. I didn't know the person.

5 Q. What about Ms. Callie Williams? You knew her face  
6 as well but didn't know the person?

7 A. I knew her.

8 Q. How is it that you knew Ms. Callie Williams?

9 A. Because her sister is married into my family on the  
10 Davis side, not on the Coleman side.

11 Q. Tell us a little bit about that. Now he is related  
12 to?

13 A. I don't know anything. The only thing I know about  
14 Ms. Williams is her sister is my cousin's husband.  
15 And as far as associating with her, that has never  
16 happened.

17 Q. Well, he is family; is that not right?

18 A. No, not to me. She is family to him. I doesn't  
19 know anything about her or her family.

20 Q. Family by marriage?

21 A. I know her sister.

22 She doesn't attend any affairs or anything that  
23 we give. We do not visit or talk on the phone or  
24 associate. I just know her.

25 Q. Let me ask you this: How far did you go in school?

1 12 years of high school education; is that right?

2 A. Two years Alabama State and a year and half LPN and  
3 about six months of criminology, Tuskegee.

4 Q. Outstanding. Outstanding.

5 Now, I want to turn your attention directly at  
6 this particular point to Mr. Donnie Williams.

7 Now, for the purpose of your testimony today,  
8 did you bring any documents with you?

9 A. No, I didn't bring documents. What kind of  
10 documents do I need?

11 Q. Let's talk about that.

12 Now, you have admitted up under examination,  
13 cross-examination that you work 40 hours a week; is  
14 that correct?

15 A. That's correct.

16 Q. 52 weeks out of a year?

17 A. Yes, 52 weeks a year.

18 Q. And you have been doing that about six or seven  
19 years; is that right?

20 A. Yes.

21 Q. And you have run across hundreds if not thousands  
22 of people; is that correct?

23 A. Correct.

24 Q. You didn't know Donnie. You knew his face but  
25 didn't know much about him that you knew of; is

1           that correct?

2       A.    That's correct.

3       Q.    Now, in your training in law enforcement, okay, you  
4            would agree that in order to be an effective  
5            security guard, it is a necessity to be accurate?  
6            Would you agree with that?

7       A.    Of course.

8       Q.    And you would agree that in order to be  
9            accurate -- Have you ever heard of the terminology  
10           a short pencil is better than a long memory?

11           Have you ever heard of that?

12      A.    Sure.

13      Q.    Let's talk about that. As a security guard, do you  
14            keep a logbook?

15      A.    Logbook on what?

16      Q.    Do you keep a logbook at your station?

17      A.    Yes, that we log the trucks in and out.

18      Q.    Let's talk about that logbook.

19            With respect to that logbook, is there a  
20            logbook that you can log various incidents?

21      A.    We have incident reports. And we don't write  
22            incidents unless an indent really happen  
23            and --

24      Q.    Let's talk about that, okay?

25      A.    Okay.



1 Q. Now, you stated earlier upon the examination that  
2 you recall something coming across the guard shack  
3 about Mr. Donnie Williams being terminated and  
4 enjoined. Do you recall that?

5 A. Yes.

6 Q. What day did that come across?

7 A. What day?

8 Q. Yes.

9 A. I don't remember what day. I don't remember what  
10 month.

11 The only thing I remember is what was posted in  
12 the guard shack, and I followed procedure by  
13 telling him -- informing him that he was not  
14 allowed there, and if he had came back I would have  
15 to call the cops.

16 Q. So you don't remember what day that was?

17 A. No, I don't.

18 Q. You don't remember what month; is that correct?

19 A. Yeah.

20 Q. Now, you still agree that a short pencil is better  
21 than a long memory? That is one example.

22 A. In some cases -- I follow my orders as to what I'm  
23 supposed to do. I know my job; I know it well.  
24 And no one told us that we had to follow procedure  
25 about writing down a date whenever we get a note

1 posted, because we get them often, and we don't  
2 have to keep tabs on that. That is done, I assume,  
3 through the front.

4 Q. Now, so we got a situation where you say that you  
5 recall a note coming across the guard shack  
6 crossing your eyes. You don't remember what date  
7 and you don't remember what month; is that correct?

8 A. No, I don't. Would you if it had been almost a  
9 year, I assume.

10 Q. All right. You state -- would you agree -- we are  
11 talking about -- Would you agree with me that one's  
12 ability to remember increases when the correlate  
13 is -- the time proximity is closer to the event?

14 In other words, the closer the event is to that  
15 point in time, the better your ability to be able  
16 to recall; is that correct?

17 A. Well, I didn't have to remember that.

18 Q. You didn't have to remember?

19 A. I didn't have to.

20 Q. You stated earlier, okay, on direct examination  
21 that you recall Mr. Donnie Williams coming by after  
22 he was barred from Wayne Farms about six to seven  
23 times. Was that your testimony?

24 A. I said he came by, yes, three times on my shift  
25 before and maybe three or four times after the note

1 was posted, and I was able to stop him and tell him  
2 that he was not allowed.

3 Q. Let's talk about that incident, number one. What  
4 day did that happen?

5 A. I didn't record it. Like I said, that wasn't my  
6 job.

7 When I am at Wayne Farms, I'm there doing a  
8 job, and that's the job Wayne Farms require me to  
9 do. And as far as rules and regulations, I know  
10 them all and that wasn't part of it.

11 When I'm in the guard shack, my job is to check  
12 IDs, log trucks in and out, sign in visitors and  
13 things. I have my duties, and I did not write down  
14 what date or time that Mr. Williams came through  
15 because when he came through, I was not aware that  
16 anything was going on. Even if I was aware, it  
17 still wasn't my job to write down a date and a time  
18 that he came through there. I get paid to do Wayne  
19 Farms work.

20 Q. Let me stop you there, Ms. Coleman. Are you  
21 telling this Court that it is not your job when you  
22 have a direct order from the company baring the  
23 person from the premises of territory, that it is  
24 not your job to stop that person?

25 A. I did my job when I told him he was no longer

1           allowed on the premises. That was my job, and when  
2           I did that, he did not come past me no more.

3           He rode around the roadway. He was still  
4           riding around the road.

5           I don't have anything to do with that until you  
6           come on Wayne Farms' premise.

7       Q.   Now, you state that the first time he attempted to  
8           come through you stopped him. What date was that?

9       A.   I didn't stop him the first time.

10      Q.   That you stopped him the first time?

11      A.   No, I didn't.

12           He came through three times before we got the  
13           notice in the guard shack that he was not allowed  
14           there.

15           And the next two times he came through, I was  
16           pretty busy. And when I did get to speak to him, I  
17           told him he was not allowed there. Some people  
18           ride by and sit for a minute.

19           I caught him at his car, and I told him, he was  
20           not allowed on the premise. A lot of times people  
21           come in, and I'm busy with the truck driver.

22      Q.   Now, you stated a moment ago that he came through  
23           before you got the note; isn't that correct?

24      A.   Yes, he did.

25      Q.   Isn't it possible that he came through prior to him

1 being bared from the premises? Because you don't  
2 recall the exact date that he got bared from the  
3 premises, do you not?

4 A. I'm not sure about that. All I know is when the  
5 notice was posted in the guard shack, I did my job,  
6 and that was to inform him that he was not allowed  
7 on the premises.

8 Q. Let me ask you this: The note that you allege came  
9 across the guard shack, was it signed by Mr. Donnie  
10 Williams?

11 A. Mr. Williams doesn't sign anything over there.

12 Q. Okay. So that being the case, isn't it probable  
13 that Mr. Williams didn't know he was bared from the  
14 premise?

15 A. He said he didn't know when I told him, and he said  
16 he wouldn't come back; and he didn't on my shift.  
17 But what happened after my shift, I don't know. I  
18 wasn't there.

19 Q. So we have a situation where you don't recall the  
20 date and the month when the note came across the  
21 guard shack. Is that not right? We agree with  
22 that? Is that not right?

23 A. Yes.

24 Q. And we've got a situation where you don't recall  
25 the date and or date where he allegedly came by the

1 premises? You don't recall any of those dates; is  
2 that not right?

3 A. I assume it was when whatever it was going on. I  
4 don't know what his reason was for riding around.

5 Q. Isn't it possible to the extent that he did come by  
6 and you don't have a logbook that would  
7 substantiate your testimony that he did in fact  
8 come through; isn't that correct?

9 A. I don't keep records of who is terminated. Those  
10 are kept in the front office. We don't keep  
11 records of that.

12 Q. Now, you are not here today testifying before the  
13 ladies and gentlemen of the jury that Mr. Donnie  
14 Williams committed a criminal act by making one or  
15 more trips back up to Wayne Farms? You are not  
16 testifying to that; is that correct?

17 A. I'm telling what I seen on my shift.

18 Q. My question to you, okay --

19 A. Okay. What is it?

20 Q. You are not here testifying that he violated the  
21 law to the extent to which the jury believes what  
22 you are saying, that he came through one or more  
23 times after he was terminated. You are not saying  
24 he violated the law.

25 You are not saying that, are you?

1 A. I'm not, no. I'm not the law. All I said was he  
2 came through and I informed him he was not allowed  
3 and I didn't see him on my shift anymore.

4 Q. And once you told him he was not allowed, he  
5 respected that; am I not right?

6 A. Yes. When I informed him of that, I had done my  
7 job.

8 Q. And once you put him on oral notice that he is not  
9 allowed back through, okay, he didn't come back  
10 through. Isn't that what you are telling the  
11 ladies and gentlemen of the jury?

12 A. I said he did not come back through on my shift.

13 There is another shift after I leave. I don't  
14 know what happened on that shift.

15 Q. Okay.

16 You agree that your working knowledge only  
17 applies to your sensory perception, what you see  
18 and what you hear; isn't that correct?

19 A. What --

20 Q. You never saw him come back through after you told  
21 him he wasn't allowed; isn't that correct?

22 A. I said he did not come back on my shift, on my  
23 shift.

24 Q. And you would agree you never heard them come back  
25 through after you told him that he wasn't allowed;

1           isn't that correct?

2       A.   No, I didn't say that.   Because I did hear that he  
3       came back through, but it wasn't on my shift.   I  
4       only go by what happened on my shift.   I don't  
5       speak hearsay.   I came up here to answer the  
6       questions that I was asked.

7       Q.   And as far as your working knowledge is concerned,  
8       he strictly obeyed the command of Wayne Farms by  
9       not coming back through as far as you know; is that  
10      right?

11      A.   On my shift.

12      Q.   Do you know why we are here today, what this case  
13      is about?

14      A.   I've heard.

15      Q.   Let's talk about that.   You talk to your cousin  
16      about this case?

17      A.   Sure.   I didn't talk to her about this case because  
18      there was no case.   But when Mr. Williams came  
19      through at one time, I asked her was anything going  
20      on.

21               Her children came down with the police  
22      following them, and that's why they were afraid  
23      because he had threatened her.   Like I say, I don't  
24      talk about hearsay, but you are asking the  
25      questions, and I'm going to answer them.



1           And after the cops came down through there,  
2           Ms. Williams came through the gate one day, and I  
3           asked her was anything going on with her and  
4           Mr. Williams, and she said, yes, and she began to  
5           tell me parts about it. And I said, you don't have  
6           to worry about him coming back on my shift because  
7           if he come back on my shift, he will be arrested  
8           because my job is to call the police.

9       Q.    Now. I thank you for that clarification.

10           You know that Mr. David Donnie Williams is  
11           charged with stalking. You do know that?

12       A.   That's what the subpoena say.

13       Q.   And you also know that Mr. David Donnie Williams is  
14           charged with harassment under the domestic violence  
15           law; is that right?

16       A.   That's what the subpoena say.

17       Q.   Look at the ladies and gentlemen of the jury.

18           Can you tell either one of these people that  
19           you know conclusively a hundred percent that David  
20           Donnie Williams stalked this young lady?

21           You never saw him stalking this young lady; is  
22           that not correct?

23       A.   It depends on what you mean by stalking.

24       Q.   Did let me ask you that.

25           Did you see this young man stalking?

1 A. I seen him riding a lot if that's under the  
2 category of stalking. He did a lot of riding.

3 Q. Well, I do a lot of riding and I'm sure you do to.

4 A. I don't just ride around a place I'm not working.  
5 And I know he was looking for her.

6 Q. You ever heard of a constitutional right of  
7 association, freedom of travel?

8 A. Yeah, that's what I'm saying. I can't say he was  
9 stalking her and that he wasn't. Because what he  
10 was doing fits as far as what I am familiar with  
11 stalking.

12 Q. Let me ask you this: Did you ever see David Donnie  
13 Williams in the company of this young lady during  
14 the time you were at the guard shack where here it  
15 is he was harassing her?

16 A. She was never out when he came by.

17 Q. Answer my question yes or no.

18 A. No. She wasn't there.

19 Q. So you would agree you never seen him stalking her.  
20 Would you agree with that?

21 A. I didn't say that. I said it depends on what you  
22 mean by stalking.

23 What is stalking?

24 Q. In order to stalk somebody, you have to be right  
25 there on them.

1 A. I don't agree with that. You can stalk a person  
2 and you don't have to be right there. The stalking  
3 I am familiar with, you can be out waiting for  
4 somebody to try to catch them, to wait and do  
5 whatever you want to do. That's the stalking I am  
6 familiar with. That's why I ask you what you mean  
7 by stalking.

8 Q. Do you know of any law against a person sitting and  
9 watching somebody?

10 A. Well, I wouldn't feel comfortable -- if I was  
11 having problems and I went to the law on a person  
12 and they still follow me around, and everywhere I  
13 go, they showing up. Yes, I would feel  
14 uncomfortable.

15 Q. Let me ask you: You said a person going to the  
16 law; is that what you said?

17 A. Yes, I said.

18 Q. Are you saying that he went to the law?

19 A. I don't know where she went.

20 I later learned after I found out about this  
21 stuff that there was problems with them and he had  
22 been trespassed from her.

23 Q. Let me ask you this: You only talked to her; am I  
24 right about that?

25 A. No. I've heard in other place.

1 Q. My question to you is: You only heard about her  
2 version of events; is that correct? Yes?

3 A. Yes, when I asked her if she was having problem.

4 Q. Did you talk to her about her version of events in  
5 terms of what was happening?

6 A. Not everything.

7 Q. Just answer my question.

8 A. I asked her if she was having problems after the  
9 cops came out.

10 I didn't know anything about what was going on  
11 before then as far as they were concerned.

12 Q. Did you talk to this young man? Did you ask him,  
13 Donnie, what's going on with you and Ms. Callie  
14 here and all?

15 You never spoke to him about this, did you?

16 A. I only informed him that he was not allowed on the  
17 premises. And I told him that.

18 Q. Now, wouldn't you agree there is always two sides  
19 to every story?

20 A. But like I said, if you will listen, during the  
21 time I informed him that he was not allowed on the  
22 premises, I didn't know anything was going on.

23 Q. Okay. Let me ask you this: She told you after he  
24 was not allowed on the premises that something was  
25 going on?

1 A. She -- No. No, she didn't tell me anything.

2 When the cops came out -- When her daughter  
3 brought the cops out because she was afraid or  
4 something --

5 Q. Stop right there.

6 A. I asked her -- I stopped and asked her was anything  
7 going on.

8 Q. Let me ask you this right here: Are you inside her  
9 head to know exactly what she is feeling?

10 A. I didn't say I was. I said the conversation with  
11 her was limited.

12 Q. You said she was afraid. How would you know that?

13 A. She told me what things were going on after I  
14 stopped her and addressed this to her. And I would  
15 be afraid too.

16 Q. Do you believe she was afraid?

17 A. Yes. She did seem afraid several days when she'  
18 came through there. She acted like she was afraid  
19 of something. She didn't come back out on breaks,  
20 and her daughter brought food to her.

21 Q. Let me test you on that.

22 A. I'm taking a test? I'm not on trial.

23 Q. You said she was afraid.

24 Is it rational that if a person is being  
25 stalked and in fear of bodily harm that they would

1 not call 911? Is that rational?

2 A. I don't know anything about that.

3 I told you my version of what stalking meant to  
4 me. I don't know anything else of all this stuff  
5 you are talking about. I answered your questions.

6 Q. Isn't that what people do when they call --

7 A. I don't know. I know what I would do.

8 Q. Would you call the law?

9 A. Sure, I would call them if I was scared.

10 Q. Would you call 911?

11 A. I've never been in that position when I was scared.  
12 I don't know what I would do. I may call them and  
13 I may panic and not do nothing. I may just sit  
14 there scared. I don't know what I would do.

15 Q. Let me ask you: If somebody is stalking you,  
16 wouldn't you seek redress of that through the  
17 courts, if you can, to get protection from abuse,  
18 to put this to rest to stop this? Wouldn't you do  
19 that?

20 A. I mean, how they going to stop a person? Just  
21 because you go get a court order, a piece of paper,  
22 that doesn't stop anyone. They are going to keep  
23 right on doing what they want to do.

24 I've heard several cases where this happened  
25 and the person end up getting killed. They went

1 through the Court, but they didn't stop it, and  
2 something bad came out of it.

3 I don't know what to say because I don't know  
4 anything about it. Like I say, it never happened  
5 to me. I only know in certain incidents you are  
6 scared, and I don't know what your mind tell you.  
7 I don't know. Mine might tell me to shoot. 'Cause  
8 I'm not going to let nobody terrorize me.

9 Q. Now, you would agree that a person who is in fear  
10 of their safety and bodily harm, unless they  
11 welcome this aggression, a rational, reasonable  
12 person would take some effort to stop it, would  
13 they not?

14 A. I can't answer that. I can't answer for some other  
15 person.

16 Q. You would, wouldn't you?

17 A. Any way I had to stop it, I would.

18 Q. One way of you stopping it would be to go to the  
19 courts and get a court order, forbidding that  
20 person to have contact?

21 A. That's one way, but that's no guarantee.

22 Q. The other way is to call 911 and have police come  
23 out. Isn't that one way?

24 A. I assume so, yes.

25 Q. Another way is to go down to the police station and

1 speak to a magistrate and get a criminal warrant  
2 against that person. That's another way to stop  
3 it; isn't that correct?

4 A. Um, during a lot of times when this stalking was  
5 supposed to be going on, this young lady was in  
6 there working. She didn't even know he was riding  
7 out there.

8 Q. That's not the question I asked you. I want a  
9 direct answer to my question.

10 Isn't it a fact that one way to stop it is to  
11 go and get a warrant through the police department  
12 through a magistrate?

13 A. Yeah, that's one way.

14 Q. And another way to stop it is to arm yourself; is  
15 that not right?

16 A. That's right.

17 Q. And go and get a pistol permit in accordance with a  
18 weapon is one way to stop it, isn't it?

19 A. Yeah, that's a way of stopping it.

20 Q. Another way to stop it is to arm yourself with a  
21 knife or something. Isn't that a way to stop it?

22 A. It is.

23 Q. And another way to stop it is that person who's  
24 being aggressive towards you, you don't welcome  
25 them back; isn't that right? That's not rational,



1 is it?

2 A. I don't know.

3 Q. If a person is harassing you and you don't want to  
4 be bothered --

5 A. You are harassing me.

6 Q. I'm harassing you?

7 A. Yes, you are.

8 MRS. PENN: I object to badgering the witness.

9 A. And I don't like you harassing me. I've answered  
10 all of your questions; everything I know.

11 Q. I'll be brief. I promise you.

12 You would agree that if you have an unwanted  
13 intrusion, a person stalking you for lack of a  
14 better terminology, you don't welcome that  
15 aggression back into your life continually over and  
16 over again? That's not rational, is it? Isn't  
17 that right?

18 A. I guess not.

19 Q. Wouldn't you agree with that; that's not rational,  
20 is it?

21 A. Are you speaking on my behalf or her? Are you  
22 talking to me or are you talking about her?

23 Q. Let me ask you: Do you consider yourself a  
24 rational being?

25 A. Tell me what you mean rational.

1 Q. Reasonable, prudent.

2 A. I consider myself as honest and fair. I was taught  
3 that way, and I am not going to sit here and say  
4 something because you are trying to trick me up and  
5 make me say something that you want me to say. I'm  
6 not going to do it.

7 Q. I'm not trying to trap you I'm just trying to get  
8 the truth out you.

9 A. I'm telling you the truth.

10 Q. Let me ask you: If you have a person who is being  
11 aggressive towards you, stalking you, and you are  
12 in fear of bodily harm, not only yourself but your  
13 kids, you don't continually over and over again let  
14 that person come back and forth in your life, do  
15 you?

16 A. My kids was grown. That didn't happen when my kids  
17 were small. I didn't have that problem. I left my  
18 kids' father when my baby was six months old, and I  
19 raised my kids. And I didn't have no men in my  
20 home. And I worked for my kids and I took care of  
21 them, so I don't know how to answer that.

22 Q. Let me ask you this question: You have been  
23 knowing her for how many years, Ms. Callie  
24 Williams?

25 A. For a while.

1 Q. Five years?

2 A. It's been longer than that. But me and Ms.  
3 Williams does not hold conversations socially. I  
4 just know her.

5 Q. How long have you been knowing her socially?

6 A. The way I know her is when my cousin and her sister  
7 got married.

8 Q. About ten years?

9 A. I didn't know her before that.

10 Q. About ten years?

11 A. It's been longer than that.

12 Q. You wouldn't consider it rational for a person to  
13 put their kids in harm's way year after year after  
14 year, would you?

15 A. What's that got to do with me? I don't know what  
16 she's putting her kids in.

17 Q. Uh-huh (affirmative response). Now, you do know  
18 and I know, and ladies and gentlemen of the jury  
19 need to know, you have heard of situations where  
20 people make up stuff. You know that?

21 A. And I know that -- Yes, people make up stuff, and I  
22 know that I don't know what Ms. Williams did as far  
23 as her kids in this situation, because like I said,  
24 I didn't know anything was going on.

25 I only know what situation my kids was in, and

1           that was a safe environment.

2       Q.    Now, you would agree that it is possible that  
3           Ms. Williams contending that she had been stalked  
4           by my client Mr. David Donnie Williams was made up?  
5           That's possible, isn't it?

6       A.    I don't know.

7           I didn't bring you no hearsay to this court,  
8           and I heard plenty of hearsay. I can't answer that  
9           question for Ms. Williams.

10      Q.    My question to you is: You weren't there when the  
11           alleged stalking took place?

12      A.    How I'm going to be there?

13      Q.    You weren't there?

14      A.    Why I'm going to be there?

15      Q.    Am I right about that, you wasn't there; am I  
16           right?

17      A.    Like I said, you can watch somebody follow people  
18           around, and as far as I am familiar with it would  
19           be stalking because you are looking for them.

20           I've answered that about five times.

21      Q.    Okay.

22           Have you seen the indictment in this case?

23      A.    What you mean?

24      Q.    Have you seen the indictment, the date the  
25           indictment says Ms. Williams got stalked by my

1 client?

2 A. I just got a subpoena.

3 Q. So you don't know the date that Ms. Williams  
4 contends?

5 A. I don't know. Maybe she did get stalked.

6 Q. April 17th, 2004. You weren't around Ms. Callie  
7 Williams on April 17th, 2004, were you?

8 A. I don't know unless she passed through the guard  
9 shack coming to work and I had to check her ID.

10 Q. Did you see Ms. Callie Williams and Mr. David  
11 Donnie Williams together on April 17, 2004?

12 A. I don't know.

13 Q. Okay. Now, that's the date that the State of  
14 Alabama contends that my client stalked  
15 Ms. Williams.

16 You didn't see him stalking Ms. Williams on  
17 April 17th, 2004, did you?

18 A. Just because I didn't see it. Maybe someone else  
19 did. I don't know what day was April 17th.

20 Q. And you are only here today to testify about your  
21 personal knowledge; isn't that correct?

22 A. That's what I thought I did.

23 Q. So as far as the ladies and gentlemen of the jury  
24 are concerned, April 17th, 2004, you never saw  
25 Mr. David Donnie Williams stalk Ms. Callie

1 Williams; isn't that correct? Yes or no?

2 A. Yeah, you are correct. I can't say what date. I  
3 can't say I seen him stalking her at all.

4 Q. Okay. Now, March 30, 2004, you didn't see  
5 Mr. David Donnie Williams harass Ms. Callie  
6 Williams by putting his hands on her person? You  
7 didn't see that, now, did you?

8 A. Where was that supposed to happen?

9 Q. My question to you is: Did you see him commit  
10 domestic violence against her on March the 30th,  
11 2004?

12 A. I don't be around her. I don't know what he did.

13 Q. Is that a yes or no?

14 A. No, I didn't see it.

15 Q. Then that's a no. Am I right about that?

16 Isn't it a fact that the reason you are here  
17 today is because the State of Alabama is attempting  
18 to bolster its case by having you subpoenaed here  
19 and to give uncorroborated testimony that you have  
20 not one single document to back up your testimony  
21 with?

22 MRS. PENN: Your Honor, I object.

23 A. There is no document. We don't write documents on  
24 that. That is not in my job description to write  
25 documents on that.

1 Q. And, again, why should this jury believe you; you  
2 are related to her by marriage?

3 A. I'm not related to her at all. My cousin's wife is  
4 not related to me. She is just in the family.

5 Q. And, again, you have been knowing her for more than  
6 ten years. You don't even know this man other than  
7 just seeing him. You know her better than you know  
8 him; isn't that correct?

9 A. I know of both of them. When you live in a small  
10 town, you will know a lot about people. That don't  
11 think -- That don't mean you have to associate and  
12 be friends with them. I know a lot of hearsay.

13 Q. Again, your testimony today is colored by one sided  
14 investigation and information.

15 You spoke to her and got her version of events,  
16 but you didn't humble yourself to speak to this  
17 young man and get his version, did you?

18 A. The only thing I could tell him was he was not  
19 allowed on the premises. And the only other time I  
20 seen him was riding. And I did what I was supposed  
21 to do.

22 Like I said, when the police came through and  
23 her daughter brought them through there, it was my  
24 job to find out what was going on. Because if  
25 anything happened on the premises, I would have

1       called the police.

2       Q.    You agree that it is critically important that you  
3       remain objective and neutral?

4       A.    I agree.  And that's why I am not telling you a  
5       lot of history and answering the questions you are  
6       asking.

7       Q.    And just like you went to here and got here side of  
8       the story, you technically should have done the  
9       same thing to him; isn't that correct?

10      A.    I didn't go to her and get her side of the story.

11      Q.    She came to you?

12      A.    I was at work.  And, like I said, the case with the  
13      cops, I stopped her and asked her if she was having  
14      any problems.

15      Q.    So you stopped her?

16      A.    Yes, I did.

17      Q.    Why didn't you stop him?

18      A.    Because I spoke to the cops and they told me a  
19      little version of what was going on with them.  He  
20      wasn't there to stop.  I told him what all I needed  
21      to tell him.  And if he had came through again on  
22      my shift, I was just going to pick up the  
23      telephone.

24      Q.    Let me ask you this:  Are you married?  Single?  
25      Widows?  Separated?



1 A. Separated.

2 Q. How long you been separated?

3 A. About eight and a half years. It's been so long, I  
4 can't remember.

5 Q. You don't like men, do you?

6 A. Love them to death.

7 MR. AUSBORN: Nothing further for this witness,  
8 Your Honor.

9 THE COURT: I believe I would quit there, too.  
10 Anything else, Ms. Pen?

11 MRS. PENN: No.

12 (The witness was excused from the stand.)

13 THE COURT: Next witness.

14 MRS. PENN: Johnnie Taylor.

15 JOHN TAYLOR

16 having first been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MRS. PENN:

19 Q. State your name, please.

20 A. John Taylor.

21 Q. Where are you residing?

22 A. Bullock County Jail.

23 Q. And while you have been incarcerated at the Bullock  
24 County Jail, have you had any contact with David  
25 Donnie Williams?

1 A. Yes, I have.

2 Q. And who was there first? Did you come in and he  
3 was there or did he come in and you were there?

4 A. He was there when I got there.

5 Q. He was there when you got there?

6 A. Yes.

7 Q. And have you had any conversations with  
8 Mr. Williams?

9 A. Yes.

10 Q. Have you had any conversations with Mr. Williams  
11 regarding the charges of domestic violence and  
12 harassment where Ms. Callie William is the victim?

13 A. Yes.

14 Q. What was the substance of those conversations?

15 A. He explained to me about she had put a no trespass  
16 on him and that he wanted me to tell that I was  
17 there when it happened at the store.

18 Q. This would be the AG?

19 A. AG right.

20 Q. We are talking about an incident that happened at  
21 that time AG, formerly known as the Big Bear?

22 A. Right.

23 Q. Did you agree to do that?

24 A. Yes, I did.

25 (State's Exhibit No. 1 was

1 marked for identification.)

2 Q. I'm going to show you State's Exhibit Number 1 and  
3 ask if you can identify that piece of paper?

4 A. Yes.

5 Q. What is it? Tell the ladies and gentlemen of the  
6 jury what it is.

7 A. This is what Mr. Williams wrote and want me to say  
8 to the parole office or parole board about this  
9 case.

10 Q. Did you bring this document with you today?

11 A. Yes, I did.

12 Q. And is this a fair and accurate depiction of what  
13 you brought to me today when you came?

14 A. Yes, it is.

15 MRS. PENN: Your Honor, I would like to admit  
16 State's Exhibit Number 1.

17 MR. AUSBORN: Subject to cross-examination.

18 THE COURT: Admitted.

19 MRS. PENN: May I publish to the jury?

20 THE COURT: Yes, ma'am.

21 (State's Exhibit No. 1 was offered, received  
22 into evidence and published to the jury.)

23 Q. And he was asking you to say that you were at the  
24 store, at AG I think you were saying?

25 A. Right.

1 Q. And were you indeed at the AG?

2 A. No.

3 Q. Never saw him and Ms. Callie Williams down at the  
4 AG Grocery Store?

5 A. No.

6 Q. But did you tell somebody that?

7 A. Yes, I did.

8 Q. You did give a statement regarding that to someone?

9 A. Right.

10 Q. And did you talk to David Donnie Williams after  
11 giving that statement? Have you talked to him  
12 after that regarding these charges?

13 A. Not right after I didn't, but later on I did after  
14 he came back from prison.

15 Q. Was it something regarding these charges?

16 A. Yep.

17 Q. Was he asking you to do the same thing you did  
18 before for him, to make that statement?

19 A. Not that statement, another statement. He wanted  
20 me to change my statement.

21 Q. He wanted you to change your statement?

22 A. Right.

23 Q. Do you know Callie Williams?

24 A. Yes, I know her.

25 Q. How do you know her?

1 A. I went to her house one day with Donnie in the car.  
2 I sat out in the car. And I heard them one night  
3 arguing.

4 Q. Do you know about when that was?

5 A. That was before this even took place.

6 Q. That was before all of this took place?

7 A. Yes.

8 Q. That was before he was trespassed?

9 A. Right.

10 Q. When did he tell you he had been trespassed?

11 A. I was at home one day, and I seen the cops stopped  
12 over there in front of Charles', his brother, house  
13 and I seen the car. The officers gave him a piece  
14 of paper. And when the officer left, I went down  
15 and asked him did he get a ticket. And he informed  
16 me that Ms. Williams had trespassed him from the  
17 house.

18 Q. But you don't know when that was?

19 A. Not right off, no.

20 Q. Was it sometime in 2004?

21 A. Yeah.

22 Q. Earlier this year?

23 A. Right.

24 Q. Tell me how it is that you know David Donnie  
25 Williams.

1 A. I've been knowing his family really all my life.

2 Q. How old are you?

3 A. Forty-eight.

4 Q. So you have been knowing the Williams family nearly  
5 all of your life, which is 48 years?

6 A. Me and his brother went to school together.

7 Q. You went to school with his brother?

8 A. Yeah.

9 Q. Do you call David Donnie Williams a friend?

10 A. Yeah. Me and him became pretty close.

11 Q. And when you lived -- When you weren't in jail, did  
12 you live anywhere near where he lived?

13 A. Yeah, right across the street.

14 Q. You lived right across the street from him. How  
15 long did you live across the street from him?

16 A. Since I got back in 2000.

17 Q. So he was your neighbor and you became close  
18 friends?

19 A. When Donnie got out -- When Donnie got out, I was  
20 in prison. When I got out of incarceration, then  
21 he was out.

22 Q. What about prior to that?

23 A. Yeah. He wasn't staying there. He was living with  
24 Callie.

25 Q. So you were his neighbor, became close friends with

1 him and knew him before you went to jail?

2 A. Yeah. I remember Donnie as a little young boy,  
3 little bitty boy.

4 Q. So you have known him a long time?

5 A. Yeah.

6 Q. And you can look at these ladies and gentlemen of  
7 the jury and tell them that David Donnie Williams  
8 asked you to lie under oath in court for him  
9 regarding what happened at the AG?

10 A. Yes, he did.

11 Q. He wanted you to say that you were there and saw  
12 it?

13 A. Yes.

14 Q. And this is a letter, State's Exhibit Number 1,  
15 that he wrote to you?

16 A. That's what I did in front of the board.

17 Q. In front of the parole board?

18 A. Right.

19 Q. And he wanted you to say something different in the  
20 courtroom?

21 A. Right, right.

22 Q. What did he want you to tell?

23 A. He wanted me to say that he was sitting in the car,  
24 and the guy that arrived with him went inside the  
25 store, and when he got ready to come out the store,

1 Ms. Williams followed the guy out the store, and  
2 Ms. Williams started arguing with him.

3 Q. And that's what he wanted you to say?

4 A. Yeah. I don't know the guy's name.

5 Q. Is he sitting in the witness room with you?

6 A. Right.

7 MRS. PENN: No further questions.

8 CROSS-EXAMINATION

9 BY MR. AUSBORN:

10 Q. May it please the Court, State of Alabama.

11 Mr. Taylor, I am Keith Ausborn, and I represent  
12 David Donnie Williams. If I ask you a question and  
13 you don't quite understand it, let me know and I'll  
14 clarify that for you.

15 What are you locked up for right now?

16 A. Theft of property.

17 Q. Theft of property. What degree?

18 A. First.

19 Q. That means you stole something of value equal to a  
20 value of a thousand dollars or more?

21 A. Yes.

22 Q. That's what they contend; is that correct?

23 A. Yes.

24 Q. What do they contend that you stole?

25 A. Old furniture in a tore up house.



1 Q. Old furniture in a house?

2 A. Right.

3 Q. You pled guilty in that case?

4 A. Yes, I did.

5 Q. Furniture that didn't belong to you, and you took  
6 it?

7 A. That's right. The guy I was with said they were  
8 going to tear the house down, and he had spoke to  
9 the person, which I didn't know at the time.

10 Q. You pled guilty to that case; right?

11 A. Yes.

12 Q. And you are not sitting here today and testifying  
13 under oath that you are not guilty?

14 You were in fact guilty of that charge;  
15 correct?

16 A. Yes, sir.

17 Q. When was this?

18 A. 2004, this year.

19 Q. That's your first felony?

20 A. (Witness shakes head negatively.)

21 Q. Let's move to the second one. What else you got on  
22 your record?

23 A. Breaking into a vehicle.

24 Q. Breaking into a motor vehicle.

25 I better get my pad to keep up with you. Let's

1 start out -- Let me do this in chronological order.

2 The first felony that you picked up was what?

3 A. That was it, motor vehicle.

4 Q. Breaking into a motor vehicle. What year was that?

5 A. '98.

6 Q. How many charges -- How many counts did you have?

7 A. One.

8 Q. Your second felony, you pled guilty in that case or  
9 you went to trial?

10 A. I didn't go to trial. My lawyer -- I got  
11 probation.

12 Q. So you pled guilty?

13 A. (Witness nods affirmatively.)

14 Q. Second felony?

15 A. That's it right there.

16 Q. Theft of Property, First Degree; is that right?

17 A. Right.

18 Q. You do know and I know, and the ladies and  
19 gentlemen of the jury need to know that theft is a  
20 crime of voracity, of dishonesty; isn't that  
21 correct, sir?

22 A. If you say so.

23 Q. You don't disagree with that; to take something  
24 that doesn't belong to you is dishonest?

25 A. Is it wrong? It's wrong.

1 Q. You did that not one time, but you did it twice?

2 A. Yes, sir.

3 Q. You have done it more than two times, you just  
4 haven't been caught; correct? You are under oath.

5 A. Not to my knowledge.

6 Q. You are not telling the ladies and gentlemen of the  
7 jury that '98 and 2000 were the only two brushes  
8 with the law that you've had. You have stolen many  
9 other times and were just savvy enough not to get  
10 caught.

11 A. (Witness shakes head negatively.)

12 Q. Are you disagreeing with that?

13 A. Yes, I am.

14 Q. I'll come back to it.

15 A. I ain't saying nothing. You are telling them.

16 Q. What sentence are you on right now?

17 A. Straight ten.

18 Q. A straight ten?

19 A. Yes, sir.

20 Q. Where you locked up at?

21 A. I just told you the Bullock County Jail.

22 Q. At the county jail?

23 A. Yes, sir.

24 Q. When have you been sentenced?

25 A. I haven't been sentenced yet.

1 Q. When are you going to be sentenced?

2 A. My sentencing is December 9th.

3 Q. Mrs. Carmella Penn, was she your prosecutor?

4 A. Yes, she was.

5 Q. You know and I know that Mrs. Carmella Penn has a  
6 recommendation that she can give to this Honorable  
7 Court on December 9th?

8 A. Ain't nobody informed me of it.

9 Q. You are the veteran. You don't know that the  
10 prosecutor can recommend a particular sentence to  
11 the Court?

12 A. A veteran? Yes, I was in the Army. I am a  
13 veteran.

14 Q. You are veteran felon, too, aren't you?

15 A. Oh, oh.

16 Q. Am I right?

17 A. Yes, sir.

18 Q. And a veteran felon like you knows that at the date  
19 of your sentence, this prosecutor can stand up in  
20 open court and recommend a sentence up or down.

21 A. See, I've never been in court that many times. You  
22 understand what I am saying? I don't work the  
23 system. I don't know the system.

24 Q. Stay right there. Don't move.

25 Ten years is what you pled guilty to; is that

1 right?

2 A. That's what my lawyer brought to me.

3 Q. Did you plead guilty up under a plea agreement or  
4 did you plead blind?

5 A. No, I didn't plead blind.

6 Q. You pled in a plea agreement; isn't that right?

7 A. (Witness nods affirmatively.)

8 Q. And was your plea agreement ten years straight?

9 A. Straight ten.

10 Q. With an application for probation, am I right about  
11 that?

12 A. That's right.

13 Q. You are hoping to get probation?

14 A. Well, whatever way it goes. If I don't, I got to  
15 do the time.

16 Q. You got a family?

17 A. Yeah, everybody got a family.

18 Q. You married?

19 A. Separated.

20 Q. You got any kids?

21 A. I supposed to. They say I did.

22 Q. They say you did?

23 A. Yes, sir.

24 Q. Not supporting the kids that they say you have, are  
25 you?

1 A. How? I'm locked up.

2 Q. Before you were locked up?

3 A. Was I supporting them? Yeah, you know that. I  
4 give them a little something something; keep the  
5 man off me just in case they are mine.

6 Q. You have been skating all your life, haven't you?

7 A. Skating? I don't understand what you are saying.

8 Q. Let me break that down for you.

9 You have been pimping the system out all your  
10 life?

11 A. Pimping the system?

12 Q. Any way you can.

13 A. They told me you was good.

14 Q. Now, you are under oath right now; isn't that  
15 right?

16 A. Yes, sir.

17 Q. Do you know what it means to be up under oath, sir?

18 A. To tell the truth.

19 Q. You raise your right hand to --

20 A. Tell the truth.

21 Q. -- to God to tell the truth, nothing but the truth,  
22 so help you God; isn't that right?

23 A. (Witness nods affirmatively.)

24 Q. You know that when you raise your right hand and  
25 here it is when it's determined that you have

1 testified falsely, you know that that's perjury;  
2 isn't that correct? You are subject to the  
3 sanctions of perjury, are you not?

4 A. That's true. That's why I came and told the truth.

5 Q. All right. Now, I'm going to back you up a minute.

6 You testified that you went to the parole board  
7 and you testified on behalf of Mr. David Donnie  
8 Williams; is that correct?

9 A. I did.

10 Q. You raised your right hand in front of that hearing  
11 officer to tell the truth, nothing but the truth,  
12 so help you good?

13 A. No, I didn't. They didn't ask me to raise my hand.  
14 They didn't ask me to raise my hand when I was in  
15 there.

16 Q. Let me ask you this: You know that that was an  
17 official hearing; is that not correct?

18 A. I don't know.

19 Q. You knew that.

20 You had like a judge, a hearing officer, and it  
21 was a hearing with sworn testimony, and you  
22 came --

23 A. They didn't swear me because they didn't make me  
24 raise my right hand. They wanted me to make a  
25 statement; I made a statement.

1 Q. Let me ask you something here because I am incensed  
2 behind this: You are telling the ladies and  
3 gentlemen of the jury and this Court that you felt  
4 empowered to lie because somebody didn't have you  
5 to raise your right hand? Is that what you are  
6 telling us?

7 A. No. I made a bad judgment.

8 Q. A bad judgment?

9 A. Yeah.

10 Q. A bad judgment and knew it was wrong?

11 A. And knew it was wrong.

12 Q. You were doing a good deed when you stole  
13 somebody's property. That was a good deed, too,  
14 wasn't it?

15 A. I thought I came here for him. I am not on trial.

16 Q. Just answer my question. You were doing a good  
17 deed then, too, weren't you?

18 A. No, I was not.

19 Q. You remember doing a good deed when you broke in to  
20 someone's vehicle and divested them of their  
21 property?

22 A. I didn't break in to it because it wasn't locked.

23 Q. So you felt privileged to break in to it because  
24 they happened to leave the security disarmed, and  
25 you just helped yourself to somebody else's



1 property interest?

2 A. No, they didn't get nothing.

3 Q. It is all about you, isn't it, Jonathan?

4 A. John.

5 Q. John. I like John. That's a Bible name; Brother  
6 John?

7 A. No, just John; John Taylor.

8 Q. It's all about you, isn't it?

9 A. (Witness shakes head negatively.)

10 Q. Whenever it's convenient for you to go left, you go  
11 left; isn't that right?

12 A. I suppose.

13 Q. And when it is convenient for you to go right, you  
14 go right; isn't that right, sir?

15 A. Right.

16 Q. You got a little sweetheart deal right now with the  
17 State of Alabama as it relates to your sentencing  
18 on December 9th, don't you?

19 A. No, sir, I do not.

20 Q. You telling us that this prosecutor here or her  
21 office has not approached you about leniency if you  
22 come forth and testify under oath today?

23 A. They have not.

24 Q. You are doing this because you are a good citizen?

25 A. No, I'm doing this because I didn't want to perjure

1 myself and get no more added to what I got.

2 It's all right to be a fool but, I don't want  
3 to be no stupid fool.

4 Q. Stay right there. Don't move.

5 You looked that hearing officer dead in the eye  
6 when questions were asked of you, and you looked  
7 him dead in the eye, and you swore up and down that  
8 X-Y-Z took place?

9 A. I didn't look him in the eye.

10 Q. You looked away?

11 A. Yeah, because I was lying. But I'm looking you in  
12 the eye because I'm telling you the truth.

13 Q. You are so gifted when it comes to lying that you  
14 can look me dead in the eye and you are lying  
15 through your teeth. You have learned to do that,  
16 haven't you?

17 A. I don't know what you mean there.

18 Q. Now, you say that you got a letter from David  
19 Donnie Williams; that's what you say?

20 A. Yes, sir.

21 Q. Does it surprise you to know that I questioned  
22 David Donnie Williams about that --

23 MRS. PENN: I object. Your Honor, anything he  
24 is about to say --

25 MR. AUSBORN: Okay. I can get around it.

1 Q. Did you see David Donnie Williams write that  
2 letter, yes or no?

3 A. I saw David Donnie Williams pass it to me.

4 Q. Answer my question.

5 A. No, I did not.

6 Q. Did you see David Donnie Williams write that  
7 letter?

8 A. No, sir, I did not.

9 Q. Is it possible that somebody other than David  
10 Donnie Williams wrote that letter?

11 A. It's possible. Probably couldn't write and got  
12 somebody to write it for him.

13 Q. So when you come forth today and try to color your  
14 testimony to the ladies and gentlemen of the jury,  
15 like here it is David Donnie Williams pimp you out  
16 and got you to lie by telling you what to say,  
17 that's not true. Because you know and I know, and  
18 the ladies and gentlemen of the jury need to know,  
19 you never saw him write that letter; isn't that  
20 true, sir?

21 A. The reason I did, sir, is because I thought I was  
22 helping a friend.

23 Q. Isn't that true?

24 A. I didn't see him write the letter.

25 Q. And it is possible that somebody other than David

1 Donnie Williams wrote that letter?

2 A. It is possible.

3 Q. And it is possible that David Donnie Williams never  
4 read that letter, much less saw it; isn't that  
5 right?

6 A. Oh, he read that letter.

7 Q. Isn't that true?

8 A. He read that letter.

9 Q. He read it?

10 A. Yeah.

11 Q. Let me ask you this: How you know he can read?

12 A. Because when he passed it to me, he told me that's  
13 what I want you to say right there.

14 Q. That's what he want you to say?

15 A. Yeah.

16 Q. That doesn't mean he read it.

17 A. Well, he must be a mind reader then. He want me to  
18 read it and don't know what's on there.

19 I said he probably can't write. I didn't say  
20 nothing about read, now.

21 Q. Let me ask you this right here, now:

22 Illiterate means that possibly a person can't  
23 read or write; isn't that right?

24 A. It's possible. They could have had bad penmanship.

25 I don't know why.

1 Q. Uh-huh. Now, I've looked at that letter -- Would  
2 it surprise you to know that you weren't on my  
3 witness list?

4 You say that David Donnie Williams wanted you  
5 to come forth and testify for the defense. Let me  
6 ask you this here:

7 When did I contact you and tell you that you  
8 were going to be part of my case?

9 A. I ain't said nary a time you were calling me.

10 Q. Do you know I am calling the shots on the defense'  
11 case?

12 A. You supposed to. He paying you.

13 Q. Donnie don't call the shots on witnesses; I'm  
14 calling the shots. You ain't on my witness list.

15 A. That's why. I'd made you got me off of it.

16 Q. I ain't never seen you.

17 A. You know why you got me off. I guess because what  
18 the prosecutor presented for you. You know why.

19 Q. Would it surprise you that I don't need you on my  
20 list?

21 A. I know you, you Ausborn out of Montgomery. You  
22 "Mad Dog".

23 Q. Now, you are on the State's list; ain't that right?

24 A. I don't know how I got on there.

25 Q. You got on there because you got a sweet deal?

1 A. I ain't got no sweet deal. Ain't nobody brought  
2 nothing to the table.

3 Q. You are just for sale to the highest bidder, aren't  
4 you?

5 A. You good, aren't you?

6 Q. Isn't that what it is with you? You are just up  
7 for auction to the highest bidder; isn't that  
8 right? Isn't that what this is about?

9 A. No, it is not.

10 Q. You are just a hired gun up for sale to the highest  
11 bidder?

12 A. Um.

13 Q. One minute you say you are going for Donnie, and  
14 the next minute you pull a 180, and you are going  
15 for the State.

16 Where is your integrity?

17 A. I guess it was in me.

18 Don't try to make me look like the villain. I  
19 ain't stalking nobody.

20 Q. Okay. Let's talk about that.

21 How long you been locked up?

22 A. Who, me?

23 Q. Yeah.

24 A. 27th of this month would be seven months.

25 Q. What day did you go up under lockup?

1 A. 27th of April.

2 Q. 27th of April. All right. You just said something  
3 that really intrigued me and I want to test you.

4 You said, well, I'm not the one stalking  
5 somebody. Isn't that what I heard you say?

6 A. Yeah. That's what I read on my subpoena was  
7 stalking.

8 Q. Now. Okay. Are you saying that David Donnie  
9 Williams stalked somebody?

10 A. I didn't say. I said I'm not the one. I didn't  
11 say he was.

12 Q. Exactly.

13 A. That's right.

14 Q. Look the ladies and gentlemen of the jury in the  
15 eyes and tell them you don't know nothing about  
16 Donnie Williams stalking Callie Williams?

17 A. I don't know nothing about him stalking her.

18 Q. And look them dead in the eye.

19 Furthermore, you don't know nothing about him  
20 harassing her domestic violence; is that not  
21 correct?

22 A. No. I heard them argue one time; that's it.

23 The only thing I know is what he want me to  
24 say.

25 Q. Let me test you on that.

1 Have you seen the indictment in this case?

2 A. No, I haven't.

3 Q. March the 30th, 2004, were you locked up?

4 A. I told you I got locked up April 27th?

5 Q. That's right. And let me ask you: Were you with  
6 Donnie Williams on March 30th, 2004?

7 A. I don't know. I couldn't tell you back then, man.

8 Q. Were you with Donnie Williams on March 30, 2004,  
9 when he was with Ms. Callie Williams?

10 A. I don't think so.

11 Q. I ask you to note that that's the date the State of  
12 Alabama said this harassment took place?

13 A. If they did, I wasn't with him then.

14 Q. You don't back up the contentions that he harassed  
15 Callie Williams on March 30, 2004, because you  
16 never saw that?

17 A. I wasn't with him.

18 Q. April 17, 2004, stalking, you aren't here to say  
19 that Mr. Williams stalked Callie Williams, because  
20 you don't know that?

21 A. I didn't say he stalked Ms. Williams.

22 Q. You never saw him stalk her on those dates?

23 A. No.

24 Q. You never heard on those dates him stalking her;  
25 isn't that right?



1           On those dates, were you physically present  
2           where you heard in your ears him state conduct that  
3           warranted a stalking or harassment? You weren't  
4           there; is that right?

5       A.    I was not there.

6           The only thing I know is I seen the police  
7           officer bring the paper to him, trespassing paper.

8           THE COURT: How much more you got, Keith?

9       Q.    Now, you say you got a trespassing paper on what  
10           date?

11      A.    I couldn't tell you what date it was. It had to be  
12           in March.

13      Q.    Had to be in March?

14      A.    Yeah.

15      Q.    Did you know it was 31 days in March?

16      A.    Sure enough.

17      Q.    Which one? Which day in March?

18      A.    I couldn't tell you.

19      Q.    First week, second week, third week, fourth week,  
20           fifth week. Do you know which week?

21      A.    I couldn't tell you.

22      Q.    You making this stuff up?

23      A.    When the officer dropped it off, I went across the  
24           street and approached Mr. Williams. I said, you  
25           got a ticket? He responded, no. He showed me,

1 talking about, I got trespassed.

2 Q. Did you see the paper?

3 A. It was in his hand.

4 Q. Did you read it?

5 A. No.

6 Q. You ain't nothing but a parrot today.

7 A. Sure enough?

8 Q. Whatever they tell you to say, that's what you are  
9 pecking through the stand now.

10 You are just a parrot, aren't you?

11 A. I thought I was a human being.

12 Q. Whatever they tell you to say, that's what you are  
13 pecking with because you are hoping to get freedom  
14 December 9th?

15 A. Or the time. It will be all good. I did the crime  
16 I'll be man enough to do the time.

17 Q. You going to apply for probation?

18 A. I get denied, I get denied.

19 Q. You going to apply for it?

20 A. I already applied for it before this even came up.

21 Q. You know that the prosecutor has got the power to  
22 make you or break you on this probation --

23 MRS. PENN: Objection.

24 THE COURT: Sustained. Let's move along.

25 Q. You have been knowing David Donnie Williams for

1 many, many years; is that right?

2 A. True.

3 Q. It don't add up that you have an ax to grind with  
4 him in this courtroom unless you are being heavily  
5 regarded by the state.

6 MRS. PENN: Your Honor, objection. It's been  
7 asked and answered.

8 THE COURT: Sustained.

9 Q. And you are sure that you remember not being up  
10 under oath at the parole board?

11 A. I was not. I didn't raise my hand.

12 Q. I'm going to check that.

13 A. Check it out. They didn't ask me no questions.

14 Q. They didn't ask you no questions?

15 A. No.

16 Q. You didn't testify?

17 A. The only thing he asked -- him, Mr. Williams, asked  
18 me.

19 Q. Did they ask you anything?

20 A. Mr. Williams asked me in front of them the  
21 questions; Mr. Williams did.

22 Q. And you gave testimony?

23 A. Right.

24 Q. You are saying that you today is more credible than  
25 you back then, back in July?

1 A. Yes, sir, I am. Because I was lying. And she knew  
2 I was lying because she made a statement in front  
3 of the folks and said he wasn't even there. And  
4 she was telling the truth. And the guy that was in  
5 the car with Mr. Williams, he knew I wasn't there.

6 Q. But despite that, you persisted with your lie; hell  
7 hath no fury for a liar. You still persisted with  
8 your lie?

9 A. That's what you get paid for is to ask me these  
10 questions. Put a good show on.

11 Q. Look them over there and look them in the eye.

12 You want them to believe you today?

13 A. I'm telling you the truth.

14 Q. A two-time convicted felon loser, the highest  
15 proportion?

16 A. What about your client? What's your client's  
17 rap sheet? And you're worried about me.

18 MR. AUSBORN: And he wants you to believe him.

19 Nothing further.

20 REDIRECT EXAMINATION

21 BY MRS. PENN:

22 Q. Have you ever contacted me regarding Donnie  
23 Williams?

24 A. No, I have not.

25 Q. Do you have any idea how I got your name to be a

1 witness in this case?

2 A. I do not.

3 Q. Would it surprise you to know that the defense  
4 attorney himself is the one that gave your name as  
5 a witness in this case?

6 MR. AUSBORN: I object to that.

7 A. I just got a subpoena.

8 Q. Did they ask you to testify?

9 A. He didn't tell me he didn't want me to come.

10 When I got the subpoena, I thought I got it  
11 from them.

12 Q. Because you were expecting that, weren't you?

13 A. Yes, I was.

14 Q. Exactly. A subpoena from the defense?

15 A. Yes.

16 Q. Did I talk to you today?

17 A. Yes.

18 Q. What did I say to you?

19 A. You asked me what did I know about this case. And  
20 you wanted me to tell the truth. And you asked me  
21 about that letter.

22 Q. And I asked you about this letter, didn't I?

23 A. Right.

24 Q. When was the first time that you brought this  
25 letter and showed it to anybody in my office?

1 A. Today.

2 Q. I didn't know anything about this, did I?

3 A. Didn't nobody know about it.

4 Q. And you were never ever in the vicinity of Callie  
5 Williams when David Donnie Williams was stalking  
6 her, harassing her and assaulting her, were you?

7 A. No.

8 MR. AUSBORN: I object, Your Honor. That's  
9 obviously assuming facts not established by  
10 evidence.

11 THE COURT: As to the assault?

12 MR. AUSBORN: And the stalking. I move to  
13 strike it.

14 MRS. PENN: The testimony is that he grabbed  
15 her.

16 THE COURT: Objection sustained as to the  
17 assault portion of the other question.

18 MRS. PENN: Thank you, Judge.

19 Q. So how would I know to subpoena you and call you as  
20 a witness?

21 A. Got to get it from him.

22 Q. You've got some charges that you said I was a  
23 prosecutor on. Is it something -- Are you pleaing  
24 to a deal that I worked out with you?

25 A. I ain't asked for no deal.

1 Q. Tell the ladies and gentlemen of the jury what my  
2 role was that day when you came into court and pled  
3 guilty and told the truth, that you were guilty of  
4 the charges that you were charged with. Tell them  
5 what my role was in this court.

6 A. I had five charges -- my lawyer got --

7 Q. What did I do?

8 A. What did you do? I forgot here.

9 Q. Did I talk to your lawyer?

10 A. No.

11 Q. Did I talk to you?

12 A. No.

13 You didn't talk to my lawyer or me.

14 Q. Wasn't involved in any negotiations in any form or  
15 fashion, was I?

16 A. I was sitting back there, and my lawyer called me  
17 back there and brought me the plea.

18 Q. You never saw him talk to me?

19 A. No.

20 Q. And never talked to you about a deal or probation,  
21 have I?

22 A. No.

23 Q. As far as you know, I don't even know you are  
24 coming up for probation on December 9th, do I?

25 A. No.

1 Q. Tell me what pimping the system out means because I  
2 don't know what that is.

3 A. I don't know either. That's my first time hearing  
4 that statement.

5 Q. I was just trying to figure it out because I needed  
6 to know for clarification of the jury to know.

7 A. I don't know. He asking the wrong man.

8 Q. You don't know what pimping the system out means?

9 A. No. I haven't been in the system long enough to  
10 know what that means. He need to ask somebody  
11 further advance than me that.

12 Q. David Donnie Williams handed you State's Exhibit  
13 Number 1, didn't he?

14 A. Excuse me.

15 Q. David Donnie Williams handed you this piece of  
16 paper, didn't he?

17 A. Yes, he did.

18 Q. And we are talking about you giving testimony. And  
19 I don't know if you know what testimony is, but  
20 when he asked you about testifying, tell me exactly  
21 where you were when this testimony occurred.

22 A. Down in the county jail in the MP room.

23 Q. At the county jail?

24 A. Right.

25 Q. Was there a judge there?



1 A. No.

2 Q. Was there somebody sitting there taking --

3 A. Stenographer was not there.

4 Q. Anybody telling you to raise your hand?

5 A. No.

6 Q. And the lady recording it?

7 A. She had a tape recorder.

8 Q. And you made that statement because you thought you  
9 were helping a friend, didn't you?

10 A. Right.

11 Q. But now you see what kind of friend he is, don't  
12 you?

13 A. When he came and asked me to change it. And I knew  
14 they had it on tape the first time and I knew I  
15 wasn't fixing to perjure myself. I know you got  
16 that statement I made.

17 THE COURT: Wait for a question.

18 Q. Those are all of the questions I have, Mr. Taylor.

19 THE COURT: Recross.

20 MR. AUSBORN: Your Honor, a quick question.

21 RECROSS-EXAMINATION

22 BY MR. AUSBORN:

23 Q. Your Honor, a quick question. Did I understand you  
24 said you had five charges?

25 When you just pled guilty, how many charges did

1           you initially have?

2       A.    You heard me correct, five.

3       Q.    Now, I asked you earlier under oath --

4       A.    You asked me had I been convicted.  You asked me  
5           how many I had been convicted.

6       Q.    Don't move.  I asked you earlier up under oath,  
7           other than the Theft of Property First Degree and  
8           the Breaking and Entering of a Motor Vehicle, were  
9           there any other charges that you had or any other  
10          offenses that you had committed that you had gotten  
11          away with, and you said, no.

12      A.    I thought you asked me if I had been convicted.

13      Q.    Let me back you up then now that we are on the same  
14          page.

15           How many other crimes have you committed that  
16          you didn't get convicted of?

17           You are 48 years old; right?

18      A.    Yeah.

19      Q.    How many times have you been committing crimes,  
20          sir?

21      A.    Me?

22      Q.    Yeah.

23      A.    I've been working mostly all my life.

24      Q.    You been working?

25      A.    Mostly all of my life.

1 Q. You get in the criminal game, what, back in  
2 '72?

3 A. In '72 I was in high school.

4 Q. High school?

5 A. Right.

6 Q. What year you get in the crime game?

7 A. I ain't never got in no crime game.

8 Q. When did you commit your first criminal offense  
9 that you got away with? Statute of limitations is  
10 over, by the way.

11 A. You never get away with no crime. You always get  
12 caught.

13 Q. Tell us about these other four charges that got  
14 throwed out.

15 A. Misdemeanor.

16 Q. What were they for?

17 A. I got to look at my paper. I done forgot.

18 Q. Wait a minute. You got amnesia now?

19 A. No. You done gave me a headache up here.

20 Q. You mean to tell me you just pled guilty and you  
21 don't know what you pled guilty to the charges that  
22 got thrown out.

23 You got selective amnesia right now, brother?  
24 What four charges got throwed out?

25 A. Let me think.

1 Q. You don't know?

2 A. Receiving Stolen Property, misdemeanor.

3 Q. Receiving Stolen Property?

4 A. Uh-huh (affirmative response).

5 Q. What did you steal? What was stolen and given to  
6 you?

7 A. A safe. You know what a safe is; right?

8 Q. Safe, where you keep your goods in?

9 A. A safe like a cabinet.

10 Q. That's number one. What's the next one?

11 A. Theft of Property Second.

12 Q. Second? What did you steal there?

13 A. I didn't steal nothing.

14 Q. They threw it out because you pled guilty? They  
15 gave you a sweetheart deal.

16 My lawyer came to me and said they dropped the  
17 four charges.

18 Let me ask you this: The four charges that  
19 they dropped, what was the item that was stolen  
20 there?

21 A. Some old wagon wheel or something like that.

22 Q. All right. Let's talk about number three. What  
23 was the third one?

24 A. Well, the other two, they go in with the theft of  
25 property.

1 Q. So we had Burglary Third.

2 A. They were in with the top first and Theft of  
3 Property Second.

4 Q. So we've got two theft of properties -- three theft  
5 of properties and receiving?

6 A. No. You ain't listening. Two theft of properties,  
7 two burglaries, receiving stolen.

8 Q. Two burglaries, two stolen and one receiving?

9 A. Right.

10 Q. Different victims; am I right about that?

11 A. Huh-uh (negative response).

12 Q. They happened at different locations?

13 A. Just two; isn't that right.

14 Q. You are out here plaguing society as a menace  
15 stealing at the point to where you are just  
16 unconscious in the process and you want to look  
17 these ladies and gentlemen of the jury in the eye  
18 and say, I'm credible, you can believe me?

19 A. At least I own up to what I did.

20 I'm not denying it.

21 Q. I hope you do real good on December 9th.

22 Nothing further.

23 MRS. PENN: Nothing further, Judge.

24 THE COURT: Thank you, Mr. Taylor.

25 (The witness left the witness stand.)

1 THE COURT: Fifteen minute recess. Y'all walk  
2 around some. Keep in mind the recess instruction.

3 (Whereupon a short recess was taken, after  
4 which the following proceedings were had in  
5 open court:)

6 THE COURT: Call your next witness.

7 MRS. PENN: Wilbert Jernigan.

8 WILBERT JERNIGAN

9 having first been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MRS. PENN:

12 Q. Mr. Jernigan, what's your occupation?

13 A. Bullock County Circuit Clerk.

14 Q. What is your job in that occupation?

15 A. Well, we do everything concerning -- to get in the  
16 court system, you have to come through the circuit  
17 clerk's office.

18 So we deal with small claims, district criminal  
19 and circuit criminal and everything pertaining to  
20 the court system. I'm the custodian of records.

21 Q. Do you issue warrants?

22 A. Yes, ma'am.

23 Q. What other agency within Bullock County can issue  
24 warrants?

25 A. I'm the only agency.

1 Q. Okay. So if someone had a complaint and they  
2 needed a warrant signed, could they get that signed  
3 down at the Union Springs Police Department?

4 A. No, ma'am. Even the police department will  
5 sometime make a warrant, but they have to come to  
6 me to get it sworn in.

7 Q. So you are the only one who can issue a warrant?

8 A. Yes, ma'am.

9 Q. Do you know Ms. Callie Williams?

10 A. Yes, ma'am.

11 Q. Tell me how you know Callie Williams.

12 A. Callie Williams has been a tenant of mine for  
13 approximately 15 years.

14 Q. What's the address where she is living now?

15 A. 1010 Martin Luther King Boulevard and that's  
16 Comfort Trailer Park.

17 Q. And that's one of your mobile homes?

18 A. Yes, ma'am.

19 Q. Do you know David Donnie Williams?

20 A. Yes, ma'am.

21 Q. How do you know David Donnie Williams?

22 A. Well, I knew Donnie for several years; even before  
23 he got involved with Ms. Williams.

24 Q. Have you ever issued any warrants for Ms. Callie  
25 Williams against David Donnie Williams?

1 A. You mean for Ms. Williams against -- Yes, ma'am.

2 Q. Do you know approximately how many you've issued?

3 A. Let's see. Approximately three or four.

4 Q. And has Ms. Williams ever come to you and you  
5 didn't give her a warrant?

6 A. Yes, ma'am.

7 Q. So she has come to you on numerous occasions to  
8 issue warrants against David Donnie Williams?

9 A. Yes, ma'am.

10 Q. And on some of them you didn't give her warrants?

11 A. Yes, ma'am.

12 Q. But you have given her approximately three or four?

13 A. Yes, ma'am.

14 Q. What about trespass warrants? Does your office do  
15 that?

16 A. Yes, ma'am.

17 Q. What is that called. Give us the correct  
18 terminology.

19 A. This -- You issue what you call a trespass notice.  
20 And to be a little bit more specific, if someone  
21 don't want me at their house, they can come into my  
22 office and do a trespass notice and the trespass  
23 notice is then served on that individual.

24 Once the trespassing notice is served, then the  
25 person know that he's not welcome; he is trespassed



1 from that residence.

2 Q. Have you ever done such notice for Ms. Callie  
3 Williams?

4 A. Yes, ma'am.

5 Q. Against Mr. David Donnie Williams?

6 A. Yes, ma'am.

7 Q. About how many do you think you have done?

8 A. I believe two.

9 Q. I see you came into court holding something in your  
10 hand. Would you mind telling us what that is?

11 A. This is one deposition this year.

12 Q. I'm going to label this State's Exhibit 2. And I'm  
13 sorry, I didn't hear what you said it was.

14 A. This trespassing notice was issued March 24, 2004.

15 Q. Okay. So that was done at the request of  
16 Ms. Callie Williams against Donnie Williams on  
17 March 24, 2004?

18 A. Yes, ma'am.

19 Q. And the other one, you said you don't think it was  
20 done this year?

21 A. Yes, ma'am, I don't think the other one was this  
22 year.'

23 Q. In any event, did you find a copy of it?

24 A. The old one?

25 Q. Yes.

1 A. No, ma'am.

2 Q. Is this a fair and accurate copy of that  
3 trespassing notice that you issued?

4 A. Yes, ma'am.

5 Q. There is a check mark on the bottom of State's  
6 Exhibit Number 2. What does that mean?

7 A. That means that it goes to the police department.

8 MRS. PENN: Your Honor, I would offer State's  
9 Exhibit Number 2.

10 THE COURT: Any objection?

11 MR. AUSBORN: Subject to cross-examination,  
12 Your Honor.

13 THE COURT: Admitted.

14 (State's Exhibit No. 2 was marked for  
15 identification, offered and received  
16 into evidence.)

17 MRS. PENN: May I establish to the jury, Your  
18 Honor?

19 THE COURT: Go ahead.

20 (Whereupon State's Exhibit No. 2 was  
21 Published to the jury.)

22 Q. And this was a trespass notice at 1010 Martin  
23 Luther King; correct?

24 A. Yes, ma'am.

25 Q. Now, I know this is your tenant and you are the

1 circuit clerk. Tell me this: Do you just pass out  
2 warrants willy-nilly?

3 A. No, ma'am. Usually when a person come to do a  
4 warrant, I require that they have a police report.  
5 And not only a police report, I converse with the  
6 police department also.

7 Q. So if Callie Williams came in and asked you for a  
8 warrant and you go, this is my tenant, do you do  
9 that?

10 A. No, ma'am. I can't be partial like that.

11 Q. So you follow the same kind of procedures each time  
12 someone comes in to sign a warrant?

13 A. Yes, ma'am.

14 Q. So you would have either seen a police report or  
15 conversed with the police department before issuing  
16 that trespass notice?

17 A. Usually on a trespass notice, I do not converse  
18 with the police department. But any time with a  
19 warrant, warrant of arrest, then I require a police  
20 report.

21 Q. All right. Thank you very much.

22 I want to take you back to April the 17th and  
23 ask you if you have any independent recollection of  
24 that date?

25 A. April 17th of this year?

1 Q. Yes, sir.

2 A. Not right offhand I don't.

3 Q. Do you recall a day where you were at the Comfort  
4 Motel Trailer Park?

5 A. Yes, ma'am.

6 Q. And saw David Donnie Williams over there?

7 A. There was -- I know one Saturday. I don't know  
8 what date. I know it was a Saturday morning I was  
9 down there working. We were removing some tin and  
10 David Donnie Williams rode by a couple of times,  
11 and then after he rode by, he stopped on Martin  
12 Luther King Boulevard for a few minutes.

13 Q. And tell me where on Martin Luther King Boulevard  
14 you saw him stop.

15 A. It was just before you get to the driveway to come  
16 to the trailer park, but it's called headed north  
17 or Martin Luther Boulevard.

18 Q. North going towards Tuskegee?

19 A. Yes, ma'am.

20 Q. And it was parked on the left-hand side of the  
21 street?

22 A. No, ma'am. Right-hand side.

23 Q. Parked on the right-hand side going north?

24 A. Yes, ma'am.

25 Q. And it sat there approximately how long?

1 A. Few minutes. It wasn't long.

2 Q. And did you see what happened -- what kind of car  
3 was it? Do you remember that?

4 A. I know it was a small sedan. I don't know whether  
5 it was a Toyota or Nissan. I don't know.

6 Q. It sat there for a few minutes, and then I assume  
7 it left?

8 A. Yes, ma'am.

9 Q. Did you see what direction it went or he went?

10 A. He went up and they went into the Union Springs AG  
11 parking lot.

12 Q. And did he get out of the car at the parking lot or  
13 did you see what he did in the parking lot?

14 A. No, ma'am. He sat in the car and was looking at  
15 the house.

16 Q. Did he park on the end -- I don't know -- give  
17 us -- At the AG, you got the store -- you are  
18 facing it on the right-hand end, and then you have  
19 a part of the building that there was nothing but  
20 concrete block. Was he parked more towards the  
21 store or the concrete block end?

22 A. More towards the trailer park.

23 Q. So not towards the store but closer to the left  
24 towards the trailer?

25 A. Yes, ma'am.

1 Q. And did you ever see him exit the vehicle?

2 A. No, ma'am.

3 Q. He just sat there and looked?

4 A. Yes, ma'am.

5 Q. Did you see Ms. Callie Williams around that time?

6 A. Mr. Williams pulled off. He left. I don't know  
7 where he went. And then a little while later,  
8 we -- The reason I'm saying we, is Early Harris and  
9 Charles Stromble (phonetic) was with me.

10 Q. So somebody was helping you work?

11 A. Right. And we saw Ms. Williams exit her house.  
12 She got into her car and left.

13 Q. Where did she go?

14 A. I don't know.

15 Q. And did you at any point see David Donnie Williams  
16 or Callie Williams after that time?

17 A. Well, after Callie left, a few minutes later, we  
18 heard a car going real fast, and we looked up and  
19 Donnie Williams was going south on Martin Luther  
20 King Boulevard, and the police was right behind  
21 him.

22 Q. Okay. And this is not something somebody told you.  
23 This is something that you saw; is that correct?

24 A. Yes, ma'am.

25 Q. And I know Ms. Callie is your tenant, but would you

1 get up on this stand and perjure yourself for  
2 Callie Williams?

3 A. No, ma'am.

4 Q. Do you have any reason to get on the stand and lie  
5 and make up stuff on David Donnie Williams?

6 A. No, ma'am.

7 Q. If you would, answer Mr. Ausborn's questions.

8 THE COURT: Cross.

9 MR. AUSBORN: Thank you.

10 CROSS-EXAMINATION

11 BY MR. AUSBORN:

12 Q. Good afternoon, Mr. Jernigan. I'm going to try to  
13 be as brief as I can, Mr. Jernigan.

14 A. All right.

15 Q. Mr. Jernigan, tell the ladies and gentlemen of the  
16 jury how long you have been in the capacity of  
17 clerk of court.

18 A. This is my tenth year.

19 Q. And prior to you becoming clerk of court, you  
20 severed in the capacity of law enforcement; is that  
21 correct?

22 A. Yes, sir.

23 Q. And law enforcement, was that with the Union  
24 Springs Police Department?

25 A. Yes, sir.

1 Q. And tell us, if you will, what you did. What was  
2 your retiring rank with the police department?

3 A. I was a captain with the Union Springs Police  
4 Department when I retired.

5 Q. Help us, if you will, now, of course it has already  
6 been clarified -- you knew, of course, Ms. Callie  
7 Williams?

8 A. Yes, sir.

9 Q. And you candidly admitted that question, I have  
10 been knowing her for, what, 15 years; she has been  
11 a tenant of yours?

12 A. Yes, approximately 15 years. It could have been a  
13 little bit more or little bit less.

14 Q. How much is her monthly rent at your place?

15 A. Two twenty-five.

16 Q. Two twenty-five?

17 A. Yes, sir.

18 Q. She is on a lease agreement with you; is that  
19 correct?

20 A. Yes, sir.

21 Q. Now, Mr. Jernigan, in your capacity as clerk of  
22 court, you stated that the standard operating  
23 procedure in terms of a person procuring a warrant  
24 and affidavit is that you require that they first  
25 of all go and get a police report; is that correct?



1 A. That is correct.

2 Q. Now, help us out, if you will, in your capacity as  
3 clerk of court, I'm sure you've had occasion to  
4 where you've seen on one or more instances where a  
5 person has procured a false warrant and affidavit  
6 based upon trumped up charges?

7 A. That is correct.

8 Q. And it would also be safe to conclude that if a  
9 person wanted to do that, it would be pretty easy  
10 to do that, go down to the police station, make out  
11 a bogus incident report and then come to you and  
12 back that bogus incident report up with a bogus  
13 complaint in order to procure a warrant?

14 A. Well, that's why I converse with the police  
15 department or the sheriff's department because  
16 sometimes a person comes to the office, and I call  
17 them and they say, oh, no, don't do that. We are  
18 still investigating it or that's not true.

19 But there have been some cases of where there  
20 have been some warrants that shouldn't have been  
21 issued.

22 Q. Now, you further agree in the area of domestic  
23 relations, this would be one such area in which it  
24 would be a prime opportunity for one mate to  
25 leverage another mate through a false allegation?

1 I mean a husband and wife, boyfriend, girlfriend  
2 get into it, arguing quibbling, the girlfriend  
3 wants to get back at the boyfriend, so she goes and  
4 trumps up a false charge against him as a means of  
5 being vindictive.

6 You have seen instances in which that has  
7 happened?

8 A. Yes, sir.

9 Q. And I say off the top, and I want to put this on  
10 the Record, I've been knowing you for the last 13  
11 years. And I state on the Record your integrity is  
12 not being brought into question before this Court.

13 A. Thank you.

14 Q. Now, with respect to Ms. Callie Williams, you  
15 stated that you had a business relationship with  
16 her. She has been your tenant; is that correct?

17 A. That is correct, yes, sir.

18 Q. Now, I want to turn your attention to the two  
19 indictments that are before this Court.

20 No doubt you are aware that my client Mr. David  
21 Donnie Williams has been indicted on two different  
22 charges, one being stalking and the other one being  
23 harassment, i. e. domestic violence?

24 A. Yes, sir.

25 Q. Now, as commencement of those indictments at the

1 district court stage, that was predicated based  
2 upon a warrant and affidavit that was, of course,  
3 issued by your office; that, of course, being  
4 specifically yourself; is that correct?

5 A. Yes, sir.

6 Q. Now, on the dates in which those warrants and  
7 affidavits were given the protocol was that you met  
8 with Ms. Callie Williams; is that correct?

9 A. Well, to do a warrant, yes, sir, they have to come  
10 in my office.

11 Q. Now, just for clarification, you would agree,  
12 Mr. Jernigan, you are not here to testify to the  
13 ladies and gentlemen of the jury that I know that  
14 Mr. Donnie Williams committed stalking against  
15 Ms. Callie Williams because, first of all, you  
16 would agree, you never observed that happening  
17 yourself?

18 A. No, sir.

19 Q. Okay. And, furthermore, you never heard those  
20 events, alleged events, occur as they were  
21 unfolding as well; is that correct?

22 A. No, sir, I did not.

23 Q. Okay. And likewise with the harassing/domestic  
24 violence, same questions: You are not here to  
25 affirm that those happened either; is that correct?

1 A. That's correct.

2 Q. Your role as clerk of court is to maintain  
3 objectivity, neutrality and allow the trier of  
4 fact, which is of course the honorable ladies and  
5 gentlemen of the jury, decide the issue of guilt or  
6 innocence based upon the trial being presided over  
7 by Your Honor; is that correct?

8 A. That is correct.

9 Q. The warrant and affidavit and the subsequent  
10 indictment are necessarily only the vehicles by  
11 which we get here today for the trial; is that  
12 correct?

13 A. Yes, that is correct.

14 Q. Now, specifically as it relates to this case, I  
15 want to talk to you about the trespassing notice?

16 A. Okay.

17 Q. Now, a trespassing notice -- Clarify, if you will,  
18 a trespassing notice is not a trespassing order; is  
19 that correct?

20 A. That is correct.

21 Q. A trespassing order, as it is relevant to this  
22 case, would be one that is issued by way of Your  
23 Honor based upon a petition application for a  
24 protection order; is that correct?

25 A. You talking about a trespassing order?

1 Q. Yeah, yeah, the order.

2 A. Yes, sir, the order has to be issued by the judge.

3 Q. Now, a trespassing notice is something that is  
4 entirely distinguished and different.

5 That is basically just something where one  
6 person puts in a request to enjoin another person  
7 from having any contact with them and basically  
8 they come to you saying, hey, I want so and so to  
9 stay away from me. They give you the name without  
10 benefit of you going through the allegations?

11 A. That's right.

12 Q. In other words, anybody -- In other words, I can go  
13 and say I want a trespassing notice against  
14 anybody. That's my right?

15 A. That is correct.

16 Q. And whether or not the alleged facts that surround  
17 that, there is no requirement that they be proven  
18 or corroborated in order to get a trespassing  
19 notice; that's your right?

20 A. Uh-huh (affirmative response).

21 Q. Now, in this case, and you stated one means of  
22 weeding out a person and/or persons from trumping  
23 up allegations is that you require that they first  
24 of all go to the police department and get an  
25 incident report; is that correct?

1 A. That is correct.

2 Q. And would it be safe to conclude that with respect  
3 to that incident report, that person who's  
4 requisitioning that incident report, giving that  
5 report, should give a thorough, accurate -- a  
6 complete recitation of all facts, circumstances and  
7 events that will subsequently support the warrant  
8 and affidavit?

9 A. That is correct, sir.

10 Q. And then basically what would happen at that  
11 particular point is that they then will bring the  
12 incident report to you, you'd look at the incident  
13 report, and based upon the contentions that are  
14 raised in the incident report, you then in your  
15 capacity then would make a professional decision as  
16 to what warrant, if any, that person is entitled to  
17 and so issue; is that correct?

18 A. Except that I do converse with the police  
19 department or the sheriff's department. Whoever  
20 officer's name is on the incident report, I ask  
21 them have you done any investigation, and we go  
22 through that.

23 Q. Now, one further way of eliminating/reducing the  
24 possibility and probability of a person trumping up  
25 charges against another person is for the arm of

1 law enforcement to do a detailed objective  
2 investigative neutral investigation; is that  
3 correct?

4 A. That would help a lot, yes, sir.

5 Q. And in your capacity as captain, retired captain of  
6 the Union Springs Police Department, that's what  
7 you did. In other words, an alleged victim comes  
8 in, makes an allegation, and certainly one  
9 amounting to a felony, before you issue that  
10 warrant, you go and you speak to the alleged  
11 perpetrator and get their version of events. And  
12 then based upon that, make some sort of surmise as  
13 to whether or not there is probable cause or prima  
14 facie showing as to whether or not a warrant and  
15 affidavit is issued. Is that the protocol?

16 A. That is the protocol. And you speak to witnesses,  
17 neighbors, anybody around.

18 You try to do an investigation to really find  
19 out the truth.

20 Q. Okay. Now, as it relates to the trespassing  
21 notice, there is no dispute -- the State has  
22 entered into evidence their contention that you  
23 issued a trespassing notice and you have so  
24 testified to that. We have no problem with that  
25 trespassing notice.

1           Now, however, once that trespassing notice  
2           leaves your hand and leaves your office, you are  
3           not responsible for the execution of that  
4           trespassing notice; is that correct?

5       A.   That is correct.

6       Q.   Now, so that being the case -- In fact, I see on  
7           the trespassing notice that the order of  
8           distribution is that one copy goes to the sheriff's  
9           department, and one copy goes to the chief of  
10          police. They are the auspices that are tasked with  
11          the execution of that trespassing notice; is that  
12          correct; they serve it?

13      A.   That is correct. But if a person live in the city  
14          limits or city jurisdiction, then that trespassing  
15          notice will go to the police department. If they  
16          live outside of the city limits in the county, then  
17          it would go to the sheriff's department.

18      Q.   I appreciate you clarifying that. That's  
19          absolutely accurate.

20               Now, just as a matter of Record, the address  
21          that Ms. Callie Williams resides at, the property  
22          that is titled to you and leased to her, what  
23          address is that -- is that inside the city limits?

24      A.   Yes, sir.

25      Q.   So the jurisdiction for service on that trespassing



1 notice for all practical purposes should have fell  
2 on the chief of police office, the Union Springs  
3 Police Department?

4 A. That is correct.

5 Q. Even though a copy of that would have been flagged  
6 to the sheriff's department as well; is that  
7 correct?

8 A. No, sir.

9 Q. So it would just be the chief of police; is that  
10 right, the city?

11 A. That is correct.

12 Q. Now, you are not here to testify that that trespass  
13 notice ever got served on Mr. David Donnie Williams  
14 because once it left your office and your hand, you  
15 no longer have any accountability for it; is that  
16 correct?

17 A. That is correct.

18 Q. And you would agree that with respect to that  
19 trespass notice, the enforcement of that trespass  
20 notice is only as good as the service which back it  
21 up?

22 In other words, that trespassing notice is a  
23 request by the alleged victim in this case, that  
24 being Ms. Callie Williams, to trespass Mr. David  
25 Donnie Williams from her residence. But if

1 Mr. David Donnie Williams never received it, he is  
2 never put on notice that that was ever issued.

3 Would you agree with that?

4 A. I agree.

5 Q. Now, if a person is being stalked, there are  
6 several remedies that a person can exercise in  
7 terms of eliminating, reducing the risk of that  
8 particular conduct.

9 Now, one such remedy, and I may add a highly  
10 effective remedy, is for that person to file a  
11 petition application for protection from abuse  
12 which would warrant this Honorable Court issuing a  
13 TRO, a temporary restraining order without benefit  
14 of a hearing, an upfront hearing stopping that  
15 conduct based upon the mere contention of the  
16 alleged victim that they are being stalked; is that  
17 correct?

18 A. That is correct.

19 Q. And once that temporary injunction is placed into  
20 effect, what happens next is that alleged  
21 perpetrator is served a copy of that petition for  
22 protection from abuse, and there is that ex parte  
23 record, which for purposes of clarification is an  
24 order without notice. And then Your Honor is then  
25 required to set a hearing, a formal hearing on the

1 merits within ten days; isn't that also correct?

2 A. Yes, sir.

3 Q. And at that particular hearing, the alleged  
4 perpetrator and the alleged victim then come forth  
5 before a trier of fact, and that would be this  
6 Honorable Court, put on whatever testimony,  
7 whatever witnesses that they have, and then Your  
8 Honor, as a person of neutrality as a trier of  
9 fact, would then make an objective decision as to  
10 whether or not an injunction should be issued; is  
11 that also correct?

12 A. Yes, sir.

13 Q. To the best of your knowledge, Ms. Callie Williams  
14 never applied for an injunction, a petition  
15 application for protection from abuse; is that  
16 correct?

17 A. Not to my knowledge.

18 Q. And if she were to apply for that, would that  
19 application be placed through your office?

20 A. Yes, sir.

21 Q. And to the best of your knowledge and information  
22 and belief, that remedy was never sought by her?

23 A. That is correct.

24 Q. Now, another remedy that a person has to avail  
25 themselves of -- obviously, if a person is being

1 stalked -- Okay. It is elementary that if a person  
2 is being stalked, you call 911, which is a synonym  
3 for help. It doesn't take a rocket scientist to  
4 know if you need help to dial 911. That's one  
5 other remedy; is that correct?

6 A. Yes, sir.

7 Q. Now, with respect to Mr. Donnie Williams and  
8 Ms. Callie Williams, you are aware that they have  
9 had a romantic involvement, a relationship with one  
10 another, for about the last seven years?

11 A. I don't remember exactly how long it was, but I do  
12 know, yes, sir, they had a romance.

13 Q. And in your capacity as landlord, you had occasion  
14 to go by the premises in which are titled to you  
15 and leased to her, and didn't you on occasion see  
16 Mr. Donnie Williams at the house?

17 A. Yes, sir.

18 Q. Did you ever go by there and see Mr. Donnie  
19 Williams assaulting Ms. Callie Williams?

20 A. No, sir, I never seen him assault her.

21 Q. And when ever you went by there, did you ever see  
22 any instances in which Ms. Callie Williams had  
23 bruises on her person, looked like she had been  
24 battered?

25 A. I can't remember ever seeing where she had some

1 bruises.

2 Q. Now, had that been the case, and I know how sharp  
3 you are Mr. Jernigan, no doubt you probably would  
4 have reported that because that's exceptional?

5 If you see evidence of somebody with a black  
6 eye, swollen cheek, busted lip, or something like  
7 that on somebody you have known in a professional  
8 capacity over the last fifteen years, that would  
9 stand out in your mind, and you would recall that,  
10 would you agree?

11 A. I'm sure it would.

12 Q. Now, an interesting thing happened that I  
13 discovered over the break. I took a long look back  
14 over the records, and I appreciate you clarifying  
15 what the protocol was in terms of getting the  
16 warrant.

17 MR. AUSBORN: Your Honor, may I approach the  
18 witness, please?

19 THE COURT: Yes.

20 Q. Now, you stated previously that before you allow a  
21 person to execute a warrant and affidavit, you  
22 first require that they go down to the police  
23 department and give a detailed report; isn't that  
24 correct?

25 A. Well, I demand a report when they come into the

1 office, yes, sir.

2 Q. And then as a follow-up, you then will confer back  
3 with law enforcement to talk about the nuances of  
4 the case and then at that time you make a  
5 determination as to whether or not there will be a  
6 warrant given; is that correct?

7 A. That is correct.

8 Q. Now, I'm going to show you what we now mark as  
9 Defendant's Exhibit Number 2, the warrant and  
10 affidavit on the March 30 domestic violence, and  
11 ask that you exam that document and tell us whether  
12 or not that is the warrant that you allowed Ms.  
13 Callie Williams to take out against Mr. Donnie  
14 Williams?

15 A. Yes, sir.

16 Q. And that document, likewise, has your signature as  
17 the authenticating official authenticating the  
18 signature of Ms. Callie Williams; is that correct?

19 A. Yes, sir.

20 Q. I'm going to show you the incident report.

21 I believe this is already in evidence. I  
22 believe it's going to be Defendant's Exhibit Number  
23 2 and ask that you take a look in the top left  
24 corner and see what date is on that incident  
25 report.

1 A. It says 3/30/04.

2 Q. Now, that incident report parallels the warrant and  
3 affidavit of March 30th; is that correct? In other  
4 words, they both were taken out on the same date?

5 A. That is correct.

6 Q. Now, very interesting things occurred when I looked  
7 at that with closer scrutiny.

8 If you look at the incident report of March  
9 30th, '04, look at the second page of the incident  
10 report.

11 It is signed by Ms. Callie M. Williams; is that  
12 correct?

13 A. Yes, sir.

14 Q. Now, I want to read into the record what Ms. Callie  
15 Williams signed off to.

16 Ms. Williams advised that she had Donnie  
17 Williams trespassed from her residence and he still  
18 comes around harassing her and stalking her.

19 Also, he has made threatening remarks towards  
20 her life, and it is signed by her and then, of  
21 course, authenticated in the right-hand corner by  
22 two separate officers; would you agree with that,  
23 sir?

24 A. Yes, sir.

25 Q. Very important point that came up in my examination

1 of the correlation between these two documents.

2 Would you agree that no where in the incident  
3 report does she mention that she was assaulted by  
4 Mr. David Donnie Williams?

5 A. No, sir.

6 Q. Now, we would agree that when you place an incident  
7 report with law enforcement, it is critically  
8 important that you be truthful? Would you agree  
9 with that?

10 A. Yes, sir.

11 Q. You be accurate; is that correct?

12 A. Yes, sir.

13 Q. And you be complete in terms of your recitation of  
14 the events; is that correct?

15 A. Yes, sir.

16 Q. You would agree that if a person has been  
17 physically assaulted, that in and of itself is  
18 critical material event and occurrence that should  
19 have been placed in that incident report?

20 A. Should have, yes, sir.

21 Q. And in this case, it's not in there; is that  
22 correct?

23 A. I don't see nothing here about an assault, no, sir.

24 Q. Now, is it possible in this case that when Ms.  
25 Callie Williams came to you in order to -- let me



1 back up here.

2 What's the time on the incident report? I  
3 believe that's in the top left corner. Is that  
4 3:23?

5 A. Yes, 3:23 p.m.

6 Q. Now, let's look at the warrant and affidavit to see  
7 if there is a time on the warrant and affidavit?

8 A. There is a time on the deposition.

9 Q. Uh-huh (affirmative response), the deposition.  
10 Okay.

11 Is there a time on it?

12 A. Yes, sir.

13 Q. And what time is that?

14 A. She advised me 3:05 p.m.

15 Q. Now, 3:23 on the incident report and 3:05 on the  
16 deposition.

17 Now, that 3:05, is that 3:05 a.m. or is that  
18 p.m.?

19 A. P.m.

20 Q. Now, in this case, we've got a situation in which  
21 protocol was breached, would you agree? Because as  
22 you have testified, the normal protocol is that a  
23 person has to go and get the incident report first,  
24 then the incident report is brought to your office,  
25 and then you independently confer with law

1 enforcement and then and only then is a warrant and  
2 affidavit issued. That's what you testified to  
3 previously; is that correct?

4 A. That is correct.

5 Q. Now, in this case, it flipped. The warrant and  
6 affidavit, the deposition, was issued before the  
7 incident report was ever sought and issued by Ms.  
8 Callie Williams; is that correct?

9 A. No, sir.

10 Q. If we look at that dates, both of them are 3/30/04;  
11 is that correct?

12 A. That is correct.

13 Q. Now, the incident report has a date of 3/23?

14 A. Yes, sir.

15 Q. Now, the deposition has a date of 3/30 and 3:05; is  
16 that correct?

17 A. Yes, sir.

18 Q. 3:05 p.m. central standard time predates 3:23 p.m.  
19 central standard time; is that correct, sir?

20 A. That is correct.

21 Q. So in this case, since the latter date is on the  
22 incident report and not the deposition, it is safe  
23 to conclude and infer that the warrant was issued  
24 before the deposition; is that correct, sir?

25 A. No, sir.

1           Regardless whatever the time on here, even when  
2           a person comes in the office, I ask them personally  
3           what time it was. I had the incident report.

4           Regardless of what the time is on here, I had  
5           one. I didn't issue the warrant and then go get a  
6           incident report. I require an incident report at  
7           the time of the warrant issued.

8           Now, the time is different, but I had a copy of  
9           the incident report. It should be in the file. It  
10          should be attached to the warrant.

11       Q.   Now, in this case you would necessarily agree that  
12           there is a tremendous disparity between the warrant  
13           and affidavit and deposition in comparison with the  
14           incident report, because in the incident report,  
15           she never mentioned she was the victim of domestic  
16           violence?

17           She never mentioned that in the incident  
18           report; is that correct, sir?

19       A.   Well, she said he has made threatening remarks  
20           towards her life and that he is harassing her. And  
21           that's what the deposition is for is domestic  
22           violence, harassment, but it is not for no kind of  
23           assault.

24       Q.   Okay. And you would agree that that was critical;  
25           it should have been in there in the incident report

1           that she had been the victim of an actual assault?

2       A.   Well, if she come down to get a warrant for  
3           harassment, then, no, sir, it would haven't to be  
4           in the incident report that she was assaulted. But  
5           if she would want to do a warrant for any kind of  
6           assault, then there would have to be some type  
7           probable cause, what you were talking about the  
8           black eye or something to where I would have a  
9           right to issue warrants and check with the officers  
10          to see what was what. It just all depends.

11       Q.   Now, nowhere in the incident report does she  
12           mention that Mr. David Donnie Williams grabbed her  
13           about her person, attempted to yank her out of the  
14           car or anything like that; nowhere is that  
15           mentioned?

16       A.   That is correct.

17       Q.   In fact, it is nowhere mentioned that he even had  
18           any actual physical contact with her person other  
19           than her alleging that he proposed prospective  
20           contact with her person? In other words, I'm going  
21           to hurt you in the future, not that I have already  
22           attacked you?

23       A.   That is correct.

24       Q.   Okay.

25                   Finally, Mr. Jernigan, notwithstanding the fact

1           that you have known this young lady for fifteen  
2           years, you have known Mr. David Donnie Williams for  
3           a number of years as well, still, you cannot -- you  
4           would not look this jury in the eye and say with  
5           any degree of conviction David Donnie Williams  
6           assaulted or stalked Ms. Callie Williams? You  
7           can't say that, can you, sir?

8       A.   Somethings I can say like I said before. I seen  
9           Donnie riding around the trailer park. I seen him  
10          parked and looking at that, but as far as  
11          assaulting her, I can't say that.

12       Q.   And as it relates to the indictment and the  
13           indictment alleging that on April 17, 2004, that  
14           David Donnie Williams committed stalking against  
15           the alleged victim, Ms. Callie Williams, you can't  
16           testify to that; is that correct, sir?

17       A.   I can only testify to what I seen him, riding that  
18           day, but that's all I can testify to.

19       Q.   And there could have been a perfectly plausible  
20           explanation behind him riding on the days in which  
21           you saw him; is that correct, sir?

22       A.   Could be, yes, sir.

23       Q.   And likewise, with respect to the harassment, March  
24           30th, you likewise cannot testify with any degree  
25           of conviction that Mr. David Donnie Williams

1 committed harassment, domestic violence against Ms.  
2 Callie Williams; is that also correct, sir?

3 A. I got a sworn deposition that she swore to and  
4 which the police advised me they had been getting a  
5 lot of calls down there.

6 Q. Now, likewise, in that deposition, it is in direct  
7 conflict with the incident report?

8 A. Yes, sir.

9 Q. And you would agree, given that conflict between  
10 the two, obviously, doubt creeps in, in terms of  
11 the validity of the deposition because they both  
12 can't be right?

13 One, either she was assaulted, she was the  
14 victim of domestic violence by physical contact as  
15 noted in the deposition, or, likewise, she was not  
16 the victim of harassment, domestic violence, but  
17 was the future recipient, if you believe her  
18 testimony that he made a future threat?

19 They are diametrically opposed to one another;  
20 would you agree with that, sir?

21 A. I guess so, sir.

22 Q. Okay. One says proposes a future event, the  
23 incident report and the deposition says the event  
24 is past tense; you would agree with that, wouldn't  
25 you, sir?

1 A. Yes, sir.

2 Q. Yesterday and tomorrow are not one in the same;  
3 would you agree with that, sir?

4 A. Yes, sir.

5 MR. AUSBORN: Thank you, so much, Mr. Jernigan.

6 THE COURT: Redirect.

7 REDIRECT EXAMINATION

8 BY MRS. PENN:

9 Q. May it please the Court. Let me clear up this time  
10 difference for Mr. Ausborn, because we got it  
11 right. You got it right. The Union Springs Police  
12 Department got it right. He got it wrong.

13 Are you looking at a copy of the incident  
14 report?

15 A. I'm looking at a copy of one for March 30th, '04.

16 Q. March 30th, '04?

17 A. Yes, ma'am.

18 Q. Date and time of this report where you were  
19 reading, 3/30/04, 3:23 p.m.; is that correct?

20 A. Yes, ma'am.

21 Q. Will you go down further to the center of the page  
22 where it says, occurred on or between?

23 A. 3/30/04 between 3:00 p.m. and 3:05 p.m.

24 Q. Now, let's go back to the deposition and the  
25 warrant. The line where you have 3/30/04 and 3:05

1 p.m., what does that say?

2 A. Date and time of offense.

3 Q. What is confusing about that?

4 A. What attorney --

5 Q. The date and time of occurrence on each report is  
6 the same, isn't it?

7 A. Yes, ma'am.

8 Q. And on the police report, it is between 3:00 and  
9 3:05 and on yours it is 3:05; is that correct?

10 A. Yes, ma'am.

11 Q. And 3:23 indicates the time she made that report at  
12 the police department; is that correct?

13 A. Yes, ma'am.

14 MRS. PENN: Thank you.

15 THE COURT: Recross.

16 Q. (By Mrs. Penn:) And I want to also clear -- just so  
17 this jury don't get sidetracked about assault and  
18 harassment and domestic violence, the domestic  
19 violence harassment, does that fit the police  
20 report that was made?

21 MR. AUSBORN: Asked and answered, Judge.

22 A. Yes, ma'am.

23 Q. In other words, does there have to be an assault?

24 A. No, ma'am.

25 Q. If she says he assaulted me, you didn't have to



1 give her a warrant for assault, did you?

2 A. No, ma'am.

3 Q. Doesn't mean he is not guilty of harassing her,  
4 does it?

5 A. Yeah, you right.

6 Q. So they are not diametrically opposed, are they?  
7 It's one in the same. She made a report, you  
8 issued a warrant, the facts in the report match the  
9 charges that you charged -- that you issued the  
10 warrant on? Is that correct?

11 A. That is correct. The police department said  
12 harassing but I asked for more detail and that's  
13 when she told me about pulling her out -- trying to  
14 pull her out of the car.

15 Q. So no diametrical opposition, is it?

16 A. No, ma'am.

17 Q. Everything is in line, isn't it?

18 A. Yes, ma'am.

19 MRS. PENN: Thank you.

20 MR. AUSBORN: No further cross, Your Honor.

21 THE COURT: Thank you, Mr. Jernigan.

22 You can go.

23 (Whereupon the witness left the stand.)

24 THE COURT: It is clear we can't finish today.

25 We will start back tomorrow morning. Does anybody

1 have a problem with starting at 8:00 in the morning  
2 instead of 8:30? Maybe if we start a little  
3 earlier -- I want the lawyers here at 7:00.

4 Y'all bee here at 8:00 and we will be sure to  
5 start on time.

6 Thank you. Keep in mind the recess  
7 instruction.

8 (Whereupon the jury left the courtroom.)

9 (End of proceedings for November 22, 2004.)

10 \* \* \* \* \*

11 (The following proceedings were held November  
12 23, 2004 outside the presence of the jury:)

13 (Defendant present with counsel.)

14 THE COURT: Before we put her on, let's go on  
15 the Record for a minute.

16 MRS. PENN: N-A-R-K-E-S-H-A Williams.

17 THE COURT: And this is Callie Williams'  
18 daughter?

19 MRS. PENN: Yes.

20 THE COURT: How old?

21 MRS. PENN: Eight.

22 THE COURT: Where is she in school?

23 MRS. PENN: Union Springs Elementary.

24 THE COURT: Have you talked to her --

25 MRS. PENN: Yeah.

1 THE COURT: -- to make an evaluation about  
2 whether she understands the difference about  
3 telling the truth and telling a lie?

4 MRS. PENN: Yes.

5 THE COURT: Do you want me to do that on the  
6 Record?

7 MR. AUSBORN: No. We're satisfied.

8 THE COURT: All right. Go on and put her on  
9 the stand, and we'll start as soon as the jury gets  
10 in.

11 (Whereupon, the jury returned to the jury box,  
12 and the following proceedings were had in open  
13 court:)

14 THE COURT: Good morning. During the breaks  
15 and other times during the trial, I've asked you  
16 this question, and I need to ask you again before  
17 we start this morning: Has anybody received any  
18 information about this trial other than the  
19 testimony and the exhibits and arguments of the  
20 lawyers that have been presented to you?

21 The next witness for the State is Narkesha  
22 Williams, the eight-year-old daughter.

23 NARKESHA WILLIAMS

24 having previously been qualified,  
25 was sworn and testified as follows:

DIRECT EXAMINATION

BY MRS. PENN:

Q. Tell the ladies and gentlemen of the jury your name and tell them loud enough for them to hear you, okay.

A. Narkesha Williams.

Q. Howl old are you Narkesha?

A. Eight.

Q. Where do you go to school?

A. Elementary school.

Q. Union Springs?

A. Yes.

Q. What grade are you in?

A. Third.

Q. Do you know Callie Williams?

A. Yes.

Q. Who is Callie Williams to you?

A. My mom.

Q. That's your mother. Do you know why we are here today? Do you understand that I am going to be asking you some questions; right?

A. (Witness nods affirmatively.)

Q. And those questions are going to be about something that happened between your mother and David Donnie Williams; you understand that, right?

1 A. (Witness nods affirmatively.)

2 Q. And have I talked to you about this case? Answer  
3 out loud so they can hear you.

4 A. Yes.

5 Q. And at any time that I talked to you have I ever  
6 told you to say anything other than what was true?  
7 Did I ask you to tell the truth?

8 A. Yes.

9 Q. Now, we are going to be talking about a day when  
10 you rode the bus home and Donnie got you from your  
11 front doorstep, okay.

12 A. (Witness nods affirmatively.)

13 Q. Do you remember that day?

14 A. (Witness nods affirmatively.)

15 Q. She can't write down what you are doing. You have  
16 to say it out loud, okay?

17 A. (Witness nods affirmatively.)

18 Q. Do you remember that day?

19 A. Yes.

20 Q. You ride the bus home that day?

21 A. Yes.

22 Q. And when you got there, was anybody at home?

23 A. No.

24 Q. And who came there and picked you up after the bus  
25 brought you home?

1. A. Donnie.

2. Q. Donnie?

3. A. (Witness nods affirmatively.)

4. Q. And did he just call you to the car or did he get  
5 out of the car?

6. A. Called me to the car.

7. Q. You didn't just run over there on your own?

8. A. (Witness shakes head.)

9. Q. He called you to the car?

10. A. (Witness nods affirmatively.)

11. Q. What did he say to you when you got to the car? Do  
12 you remember what he said to you?

13. A. No.

14. Q. What did you do after he called you to the car?

15. A. Got in.

16. Q. You got in the car. Where did you go? Did you go  
17 to the store?

18. A. (Witness shakes head.)

19. Q. Did you go to somebody's house?

20. A. No.

21. Q. Did you just ride around? You didn't go anywhere  
22 and get out? I know it's been a long time.

23. Do you remember where you went?

24. A. (Witness nods affirmatively.)

25. Q. Where did you go?

1 A. Down to the railroad.

2 Q. Down to the railroad.

3 Is that the railroad across the street from the  
4 AG?

5 A. (Witness nods affirmatively.)

6 Q. So you just drove down there?

7 A. Yes.

8 Q. And you didn't go to anybody's house, did you?

9 A. No.

10 Q. And did you see your mom that day? Did you see her  
11 when she came home?

12 A. (Witness nods affirmatively.)

13 Q. Were you sitting so that you could see the trailer?  
14 Across the railroad tracks where you were in the  
15 car, could you see your mother's house?

16 A. Yes.

17 Q. Did you see her when she came home?

18 A. Yes.

19 Q. And look out there so they can hear what you are  
20 saying, okay.

21 When she came home, what did you and Donnie do?

22 A. We got in the car.

23 Q. Where did you get out of the car at? Did you get  
24 out back over by the railroad tracks?

25 A. (Witness shakes head.)

1 Q. Where did you get out at?

2 A. At my mama's house.

3 Q. Did you get out of the car by yourself?

4 A. Yes.

5 Q. Did anybody else get out of the car with you? Did  
6 David Donnie Williams get out of the car?

7 A. (Witness nods affirmatively.)

8 Q. Did he say anything to your mother?

9 A. (Witness nods affirmatively.)

10 Q. Do you remember what he said to your mother? I  
11 can't tell whether you nodded yes or you are still  
12 thinking about it.

13 Did he say anything to your mother?

14 A. Yes.

15 Q. Do you remember what he said to your mother?

16 A. (Witness shakes head.)

17 Q. You don't remember what he said to your mom?

18 A. (Witness shakes head.)

19 Q. Was he saying good things to your mother?

20 A. (Witness shakes head.)

21 Q. Was he saying bad things to your mom?

22 A. Yes.

23 Q. Can you remember any of what he said to your mom?

24 And it's okay.. You don't have to say the bad

25 words. You can tell us anything you remember that



1 he said to your mother, okay.

2 Tell them what he said to your mom. You told  
3 us he said bad things; right? Did those thing that  
4 he said scare you? Are you thinking about it?

5 A. (No response.)

6 Q. Did the things he say scare you? Are you a little  
7 scared today?

8 A. (Witness shakes head negatively.)

9 Q. Okay. Well, look over there and tell the ladies  
10 and gentlemen of the jury if the things that Donnie  
11 said to your mom that day scared you?

12 A. He said the "B" word.

13 Q. He said the "B" word?

14 A. (Witness nods affirmatively.)

15 Q. Did he say anything with the "B" word?

16 A. (Witness nods affirmatively.)

17 Q. He did?

18 A. (Witness nods affirmatively.)

19 Q. Can you remember now what he said with the "B"  
20 word? I'll let you think about that for a few  
21 minutes, all right.

22 A. (Witness nods affirmatively.)

23 Q. Did he allow you to get into the car?

24 A. Yes.

25 Q. He did. As soon as you got out of the car, you

1           were able to get into the car with your mom?

2       A.     (Witness shakes head.)

3       Q.     Why not?

4       A.     Because he was pulling on my mama.

5       Q.     He was pulling on your mama. Tell me about that.

6           Tell me when you saw him pulling on your mother.

7           Was the window down?

8       A.     No.

9       Q.     How was he pulling on your mom then? Did he open  
10          her door? What happened?

11      A.     My nephew had opened the back door.

12      Q.     Tell them again.

13      A.     My nephew had opened the back door.

14      Q.     Your nephew opened the back door?

15      A.     (Witness nods affirmatively.)

16      Q.     And that's when he pulled on your mama?

17      A.     Yes.

18      Q.     Yes?

19      A.     Yes.

20      Q.     Was he saying bad things to your mom at that time?

21      A.     Yes.

22      Q.     Do you remember anything that he said to her when  
23          he was pulling on her?

24      A.     (Witness nods affirmatively.)

25      Q.     Yes? Tell them what you remember him saying when

1 he was pulling on her.

2 A. He said the "B" word.

3 Q. He said the "B" word? Is the "B" word a bad word?

4 A. Yes.

5 Q. Do you remember anything else he said with the "B"  
6 word?

7 A. (Witness shakes head.)

8 Q. No.

9 But the stuff he was saying, was it bad things?

10 A. (Witness nods affirmatively.)

11 Q. Now, look over there, were you afraid about the  
12 things he was saying?

13 A. (Witness nods affirmatively.)

14 Q. Did they scare you?

15 A. No.

16 Q. Did he let you get in the car eventually?

17 Were you able to get in the car with your mom  
18 then?

19 A. (Witness shakes head.)

20 Q. After he pulled on her, how about that, after he  
21 was trying to pull her through the open door that  
22 you remember nephew opened, did he let you get in  
23 the car? Did you leave the trailer with your mom  
24 that day?

25 A. (Witness nods affirmatively.)

1 Q. You did?

2 A. Yes.

3 Q. So you did get in the car with your mother?

4 A. Yes.

5 Q. And you were able to leave; is that right?

6 A. (Witness nods affirmatively.)

7 Q. Okay.

8 I'm not going to ask you any more questions  
9 right now, but he is going to be able to ask you  
10 some questions.

11 THE COURT: Go ahead, Mr. Ausborn.

12 CROSS-EXAMINATION

13 BY MR. AUSBORN:

14 Q. Lakeisha; is that right?

15 A. Narkesha.

16 Q. How are you doing this morning?

17 A. Fine.

18 Q. I'm Keith. I am going to just ask you some  
19 questions. So you can just stay relaxed.

20 Are you in school at Union Springs Elementary?

21 A. Yes.

22 Q. Out for Thanksgiving; is that right?

23 A. (Witness nods affirmatively.)

24 Q. Now, you have been knowing David ever since you  
25 were born or maybe shortly after you were born; is

1           that right?

2       A.   (Witness nods affirmatively.)

3       Q.   Has David been like a father to you, daddy to you?

4       A.   (Witness shakes head.)

5       Q.   Has he stayed at the house with you, your brother  
6           and your mother?

7       A.   No.

8       Q.   Has he lived with you-all on and off?

9       A.   No.

10      Q.   What's that? He has not?

11      A.   (Witness shakes head.)

12      Q.   He has never lived with you?

13      A.   (Witness shakes head.)

14      Q.   You are sure about that?

15      A.   (Witness nods affirmatively.)

16      Q.   So David has never lived with you?

17      A.   (Witness shakes head.)

18      Q.   Now, let me ask you this: Now, in school, whenever  
19           you have an assignment at school, you get  
20           assignments from your teacher; right?

21      A.   (Witness nods affirmatively.)

22      Q.   You have homework and stuff like that; is that  
23           right?

24      A.   (Witness nods affirmatively.)

25      Q.   You have spelling, reading, and math and stuff like

1           that? You have like lessons like that; is that  
2           right?

3       A.   (Witness nods affirmatively.)

4       Q.   Does your mother help you with your homework  
5           sometimes?

6       A.   Yes.

7       Q.   Does your teacher help you with your homework  
8           sometimes?

9       A.   (Witness shakes head.)

10      Q.   Does she help you in class with your assignments?

11      A.   Yes.

12      Q.   Now, for today, in order for you to testify today,  
13           you sat down and talked to your mother; is that  
14           right? You sat down with your mother and you  
15           talked to your mother and she explained to you that  
16           you had to come to court; y'all talked about that?

17      A.   (Witness nods affirmatively.)

18      Q.   And did your mother help you to remember your  
19           testimony? Did your mother help you with that?  
20           Did your mother go over your testimony with you and  
21           tell you this is what you've got to say and help  
22           you to remember it? Did she help you with that?  
23           Did your mother help you with that? It's okay.  
24           Did your mother help you with that?

25      A.   (Witness nods affirmatively.)

1 Q. Now, you and your mother, y'all talked about your  
2 testimony. Did she help you quite a bit? Did you  
3 talk quite a few times about it? She told you that  
4 you would be coming to court and told you you were  
5 going to get on the stand and they were going to  
6 ask you some questions.

7 Did your mother help you with that?

8 A. Yes.

9 Q. Now, Mrs. Penn, you have met Mrs. Penn before; is  
10 that right, the prosecutor right here, Mrs. Penn?  
11 This is not the first time you met her? You have  
12 met her before today; is that right?

13 A. (Witness nods affirmatively.)

14 Q. And Mrs. Penn also helped you with your testimony;  
15 is that right? It's okay. You can answer that?

16 A. (No response.)

17 Q. Did she help you with your testimony, too? It's  
18 hard to remember stuff; isn't that right?

19 A. (Witness nods affirmatively.)

20 Q. And they sat down with you and they talked to you  
21 about your testimony and told you this is what you  
22 need to say? They helped you with that; is that  
23 right?

24 A. (Witness nods affirmatively.)

25 Q. And, now, what you are trying to do right now, it

1 is tough on you because you are trying to remember  
2 everything, you are trying to remember to say  
3 everything that they told you you had to say?  
4 That's kind of tough, isn't it?

5 A. (Witness nods affirmatively.)

6 Q. Some of it you remember what they told you to say  
7 and some of it you are forgetting; is that right?

8 A. (Witness nods affirmatively.)

9 Q. Now, David, has David been like -- has David been  
10 like a daddy to you?

11 MRS. PENN: Asked and answered.

12 THE COURT: Sustained.

13 Q. Okay. Has David ever helped you with your  
14 homework?

15 A. No.

16 Q. He has not helped you with your homework, okay.

17 Has he like taken you places, like to the park  
18 or to the movies, taken you shopping or stuff like  
19 that?

20 A. No.

21 Q. Has he played sports with you, kickball or  
22 something like that?

23 A. (Witness shakes head.)

24 Q. Now, your mother and David, were they dating one  
25 another, like girlfriend and boyfriend?



1 A. No.

2 Q. They were never dating one another?

3 A. No.

4 Q. You are sure about that?

5 A. Yes.

6 Q. Did David ever spend the night at your mother's  
7 house?

8 A. No.

9 Q. Is that no? He never spent the night?

10 A. (Witness shakes head.)

11 Q. And you are sure about that?

12 A. (Witness nods affirmatively.)

13 Q. Okay. Now, has David -- now, when you do bad  
14 things, what type of punishment does your mother  
15 use against you? Does she put you in time-out?  
16 Have you ever heard of time-out? Like if you are  
17 doing something bad, your mother says, time-out,  
18 and she sends you to a room and you know, you can't  
19 watch TV or listen to the radio, you can't talk on  
20 the phone. Does your mother put you in time-out  
21 sometimes when you are bad?

22 A. No.

23 Q. Does your mother spank you when you are bad?

24 A. Witness --

25 Q. Has David ever spanked you?

1 A. No.

2 Q. David has never laid a hand on you; is that right?

3 A. (Witness nods affirmatively.)

4 Q. Is that right, he has never touched you or anything  
5 like that; is that right?

6 A. (Witness shakes head.)

7 Q. Now, how many brothers and sisters do you have?

8 A. One sister and one brother.

9 Q. And your brother, what's your brother's name?

10 A. Quadarius.

11 Q. And how old is he, about fourteen?

12 A. Yes.

13 Q. Now, when he gets in trouble, does your mother  
14 spank him also?

15 A. No.

16 Q. Does she put him in time-out or take away his  
17 activities?

18 A. No.

19 Q. Maybe take away his computer?

20 A. No.

21 Q. Computer games?

22 A. No.

23 Q. Take away his television or won't let him go  
24 outside and play? Is that how she punishes him  
25 when he is in trouble?

1 A. No.

2 Q. How does she punish him when he's in trouble?

3 MRS. PENN: I object, Your Honor. He has gone  
4 beyond the scope of what this case is.

5 MR. AUSBORN: Give me a little latitude. I  
6 promise I'll tie it in.

7 Q. How does she punish him when he's in trouble?

8 A. (No response.)

9 Q. Have you ever seen her punish him?

10 A. (Witness nods affirmatively.)

11 Q. What does she do? Does she put a belt to him?

12 A. (Witness nods affirmatively.)

13 Q. Okay. And that's a yes; is that right?

14 A. Yes.

15 Q. Now, David, has David ever spanked your brother?

16 A. No.

17 Q. He has never spanked your brother; is that right?

18 A. (Witness nods affirmatively.)

19 Q. Now, you ever -- in order for you to -- you love  
20 your mother; is that right?

21 A. Yes.

22 Q. And you want to do all that you can to please your  
23 mother; is that right?

24 A. (Witness nods affirmatively.)

25 Q. And make your mother happy; is that right?

1 A. Yes.

2 Q. And make your mother proud; is that right?

3 A. Yes.

4 Q. Has your mother told you bad things about David?

5 Is that yes?

6 A. (Witness shakes head.)

7 Q. She has not told you bad things about David?

8 A. (Witness shakes head.)

9 Q. Now, on the day that you got in the car with David,  
10 you were out on the porch by yourself; is that  
11 right?

12 A. (Witness nods affirmatively.)

13 Q. You were scared; is that right?

14 A. (Witness shakes head.)

15 Q. Your mother normally picks you up on time; is that  
16 right?

17 A. Yes.

18 Q. That day she was late; is that right?

19 A. Yes.

20 Q. Now, David drove by and saw you on the porch by  
21 yourself; is that right?

22 A. Yes.

23 Q. Was it dark at that time? Was it a little dark or  
24 was it still daylight?

25 A. Still daylight.

1 Q. And he stopped the car and you walked up to the  
2 car; is that right?

3 A. (Witness nods affirmatively.)

4 Q. And when you walked up to the car, he asked where  
5 was your mother, and you said she hadn't gotten  
6 home; is that right?

7 A. (Witness nods affirmatively.)

8 Q. And you got in the car by yourself; is that right?

9 A. (Witness nods affirmatively.)

10 Q. Was he going to take you somewhere? Was he going  
11 to take you to your sister's house?

12 A. (Witness shakes head.)

13 Q. Where was he going to take you? Do you know? Or  
14 was he just going to stay there and keep you in the  
15 car until your mother got there? Was that what he  
16 was going to do?

17 A. (Witness shakes head.)

18 Q. Did he tell you where he was going to take you?

19 A. (Witness shakes head.)

20 Q. He has taken you places before; is that right? Is  
21 that a yes?

22 A. (Witness shakes head.)

23 Q. Now, have you ever heard your mother use a bad word  
24 when she talked to David? Does your mother every  
25 now and then get upset and lose her temper and say

1 bad stuff to David? You've heard your mother say  
2 bad stuff to David -- it's okay -- haven't you? Is  
3 that right? You've heard your mother? It's okay.  
4 You are not going to get in trouble by telling the  
5 truth. You've heard your mother say bad stuff to  
6 David; is that right?

7 A. (Witness nods affirmatively.)

8 Q. And your mother has used bad words when she talked  
9 to David? It's okay.

10 You have heard her say bad words; is that  
11 right?

12 A. (Witness nods affirmatively.)

13 Q. And your mother, on that day when David picked you  
14 up, your mother said some bad words to David that  
15 day because he picked you up? She was upset  
16 because David had picked you up; is that right?

17 A. Uh-huh (affirmative response). (Witness nods  
18 affirmatively.)

19 Q. And she said some bad things to David that day; is  
20 that right? Is that right? It's okay. You can  
21 tell the truth.

22 A. (Witness nods affirmatively.)

23 Q. She said some bad things to David that day?

24 A. Yes.

25 Q. Is that yes?

1 A. Yes.

2 Q. Now, on that day, tell us, if you will, did she use  
3 the "B" word to David that day? It's okay. You  
4 can tell us. It's okay to tell the truth.

5 She used the "B" word that day?

6 A. (Witness nods affirmatively.)

7 Q. And that's what she called David; is that right?

8 She used the "B" word on David; is that right?

9 It's okay to tell the truth. You are not going to  
10 get in trouble for telling the truth.

11 She used the "B" word on David; is that right?

12 Is that yes?

13 A. Yes.

14 Q. Now, did she use another word on David also?

15 A. Yes.

16 Q. Did she use the "MF" word or anything like that on  
17 David?

18 A. No.

19 Q. She did not?

20 A. No.

21 Q. Now, David opened the car door for you to get into  
22 the car; is that right?

23 A. (Witness shakes head.)

24 Q. Did you open the car -- after your mother pulled up  
25 and David let you out of his car, did he open the

1 car to your sister's -- open the door to your  
2 sister's car so you could get in?

3 A. My nephew did.

4 Q. What's that now?

5 A. My nephew.

6 Q. Your nephew did?

7 A. Yes.

8 Q. David never tried to stop you from getting in the  
9 car; is that right? He let you get in the car; is  
10 that right? He wasn't trying to keep you from  
11 getting in your nephew's car; is that right -- I  
12 mean, your sister's car; is that right? It's okay  
13 to tell truth. He never told you, you can't get  
14 out of my car, stay in my car? He never said that,  
15 did he?

16 A. No.

17 Q. Now, after you got in the car, your mother was  
18 angry with David that day; is that right? She was  
19 upset. You've seen your mother upset before; is  
20 that right?

21 A. Yes.

22 Q. And when your mother gets upset, does she have like  
23 a temper? When she gets upset, she gets kind of  
24 angry and says bad words and stuff like that when  
25 she gets upset? It's okay to tell the truth.



1 Is that right?

2 A. (Witness nods affirmatively.)

3 Q. That's yes?

4 A. Yes.

5 Q. Okay. Now, the court reporter needs to take down  
6 what you are saying.

7 A. (Witness nods affirmatively.)

8 Q. Is that yes?

9 A. Yes.

10 Q. Now, and your mother got upset that day; is that  
11 right?

12 A. (Witness nods affirmatively.)

13 Q. And that's when she used the "B" word and some  
14 other bad words; is that right?

15 A. (Witness nods affirmatively.)

16 MRS. PENN: Your Honor, I am going to object.

17 He is putting words in her mouth. She said she  
18 used the "B" word and didn't use any other bad  
19 words. That was her testimony.

20 MR. AUSBORN: I think she said the "B" word. I  
21 didn't elicit any other bad words.

22 THE COURT: You suggested some, and I don't  
23 know where we were on that, but I know it's time to  
24 end this witness.

25 MR. AUSBORN: Thank you so much.

1 THE COURT: Anything else?

2 MR. AUSBORN: I'm about to wrap up.

3 Q. You never saw your mother and David, you never saw  
4 them fighting one another; is that right? They  
5 didn't fight one another, did they?

6 A. (Witness nods affirmatively.)

7 Q. Did you ever see them fighting one another?

8 A. (Witness shakes head.)

9 Q. And on that day, you never saw them fighting one  
10 another either; is that right? It's okay to tell  
11 the truth.

12 They weren't fighting that day; is that right?

13 A. (Witness nods affirmatively.)

14 Q. They weren't fighting one another?

15 A. (Witness nods affirmatively.)

16 Q. Were they fighting or not fighting? You didn't see  
17 them fight?

18 A. (Witness shakes head.)

19 Q. Okay. All right.

20 MR. AUSBORN: Nothing further. Thank you.

21 THE COURT: Anything else?

22 MRS. PENN: Yes.

23 REDIRECT EXAMINATION

24 BY MRS. PENN:

25 Q. Now, he asked you if you saw them fighting one

1 another.

2 Let me ask that simply: Did you see your  
3 mother hit David Donnie Williams?

4 A. (Witness shakes head.)

5 Q. Did you see David hit your mama? Look over there  
6 and tell them. Did you see David hit your mother  
7 that day that he got you off the bus?

8 Narkesha, let me ask you this first, just to  
9 clear up something. When you were in my office,  
10 did I ever tell you what to come up here and say?  
11 Did I tell you to come in here and say that Donnie  
12 took you off the bus?

13 A. (Witness nods affirmatively.)

14 Q. Did I tell you to say that or is that what you told  
15 me happened?

16 MR. AUSBORN: Asked and answered.

17 THE COURT: I don't think that's been asked  
18 about taking off the bus.

19 Q. Narkesha, when I talked to you, did I ask you what  
20 happened or did I tell you to come in here and say  
21 Donnie took you off the bus?

22 Did you tell me what happened?

23 A. (Witness nods affirmatively.)

24 Q. And I asked you what happened. Isn't that what I  
25 asked you?

1 A. (Witness nods affirmatively.)

2 Q. And you told me what happened; right?

3 A. Yes.

4 Q. I wasn't there. I don't know what happened.

5 I didn't tell you what to come in here and say,  
6 did I?

7 A. (Witness shakes head.)

8 Q. Did I tell you to come in here and say that Donnie  
9 said the "B" word?

10 Did I say, Narkesha, go in there and tell the  
11 jury that Donnie said the "B" word?

12 A. Yes.

13 Q. Did I tell you to say that?

14 MR. AUSBORN: Your Honor, that's been asked and  
15 answered.

16 THE COURT: Sustained.

17 Q. Did you tell me that that's what Donnie said?

18 I don't want the ladies and gentlemen of the  
19 jury to think that I'm telling you to come in here  
20 and tell a lie.

21 MR. AUSBORN: Your Honor, I object to counsel  
22 testifying.

23 Q. Did I tell you to come in here and tell a lie?

24 A. No.

25 Q. Did I tell you to come in here and say anything

1           that wasn't true?

2       A.    No.

3       Q.    Did your mama tell you to come in here and lie?

4       A.    No.

5       Q.    Did she tell you to come in here and say anything  
6           that was not true? Do you know what the truth is?  
7           Do you know what to tell the truth means?

8       A.    Yes.

9       Q.    You do? Do you understand each and every question  
10           that we both have asked you here today?

11      A.    (Witness nods affirmatively.)

12      Q.    Were there some things that you didn't understand  
13           or did you understand everything? It's okay if you  
14           didn't understand everything. You can tell them.

15           Did you understand everything that we asked  
16           you?

17      A.    Yes.

18      Q.    You did.

19           Now, did you -- and I may have mischaracterized  
20           your testimony when I said "hit your mom."

21           Did you see Donnie grab your mother the day he  
22           took you off the bus?

23      A.    Yes.

24      Q.    Tell them that. Tell them that will like you mean  
25           it. Did you see Donnie hit your mother the day

1 he took you off the step?

2 A. Yes.

3 Q. And I didn't tell you that, did I? You saw that  
4 didn't you? Everything that you are telling you  
5 saw is that correct?

6 A. (Witness nods affirmatively.)

7 Q. You saw what happened that day, didn't you?

8 A. Yes.

9 Q. Thank you, Narkesha.

10 MRS. PENN: Nothing further.

11 THE COURT: I got a question for you, Narkesha:  
12 Where did you get those cool boots you got on?

13 That's all the questions they are going to ask  
14 you, and you don't have to go back to school.

15 You can go on back out with the folks.

16 Who is she with?

17 MRS. PENN: Her sister.

18 THE COURT: Thank you, Narkesha.

19 (Whereupon the witness left the stand.)

20 THE COURT: Next witness.

21 (Whereupon Quadarius Williams, a minor,  
22 took the witness stand.)

23 THE COURT: How old are you?

24 THE WITNESS: Fourteen.

25 THE COURT: She is going to swear you in and

1 give you the oath to testify and then the lawyers  
2 will ask you some questions.

3 Let me tell you this, Quadarius: If they ask  
4 you something you don't understand, tell them you  
5 don't understand it. If they ask you something you  
6 don't know the answer to, tell them you don't know.

7 QUADARIUS WILLIAMS

8 having first been duly qualified,  
9 was sworn and testified as follows:

10 DIRECT EXAMINATION

11 BY MRS. PENN:

12 Q. And when you talk, turn that way so they -- when I  
13 ask you a question, turn that way so they can hear  
14 you.

15 A. Okay.

16 Q. How is Ms. Callie Williams related to you? What is  
17 she to you?

18 A. My mom.

19 Q. She is your mom. How old did you say you were?

20 A. Fourteen.

21 Q. Do you know the difference between the truth and  
22 what is not true, the difference between the truth  
23 and a lie?

24 A. Yes.

25 Q. And you are here to testify in this case about

1 something that happened between your mother and  
2 Donnie Williams. You understand that; correct?

3 A. Yes.

4 Q. And you met with me about this case, didn't you?

5 A. Yes.

6 Q. And when you were in my office and we talked about  
7 this case, did I ever tell you what to say?

8 A. No, ma'am.

9 Q. Did I tell anybody in that office what to say?

10 A. No, ma'am.

11 Q. Were you there when I talked to your sister  
12 Narkesha?

13 A. Yes.

14 Q. Did I tell her what to say?

15 A. No, ma'am.

16 Q. Has your mother told you what to say?

17 A. No, ma'am.

18 Q. You have talked with her about coming up here; is  
19 that correct?

20 A. Yes, it is.

21 Q. And you understand why you are here?

22 A. Yes.

23 Q. Did she tell you -- did she tell you to come up  
24 here and say what you are supposed to say?

25 A. Yes.



1 Q. She did. What did she do to help you come up here  
2 and tell what you are supposed to say? Did she  
3 tell you what to say?

4 A. No, ma'am.

5 Q. What did she tell you to do when you got up here?

6 A. Tell the truth.

7 Q. Did I tell you to tell the truth when you got up  
8 here?

9 A. Yes, ma'am.

10 Q. Do you know David Donnie Williams?

11 A. Yes.

12 Q. How do you know him? Is he your mother's boyfriend  
13 or was he your mother's boyfriend?

14 A. He was.

15 Q. But he is not anymore; is that right?

16 A. Nope.

17 Q. Has he lived with you-all over the years?

18 A. Sometimes.

19 Q. Off and on; is that correct? He has spent the  
20 night at your house; is that right?

21 A. (Witness nods affirmatively.)

22 Q. Stayed in the house with your mom and your sister  
23 and you; is that right?

24 A. Yes, ma'am.

25 Q. And I want to specifically call your attention to

1 the date that you and your mom went to AG's grocery  
2 and you saw David Donnie Williams, okay?

3 A. Yes.

4 Q. Do you know what you were doing prior to going to  
5 the AG? Who was with you?

6 A. My mom.

7 Q. And where were you coming from?

8 A. My mom's house.

9 Q. And you went straight over to AG's grocery store?

10 A. Yes.

11 Q. And did you see David Donnie Williams when you  
12 pulled up?

13 A. I saw him before I went in the store, but I didn't  
14 know if that was him or not. He went down towards  
15 my mama's house and he came back down toward the  
16 AG. And when we came back out, he was backed up in  
17 there, backed up beside the car.

18 Q. Let me stop you for a minute.

19 Did your mother tell you to say that?

20 A. No, ma'am.

21 Q. Is that something that you remember seeing?

22 A. Yes.

23 Q. And when you say you saw him go down towards your  
24 mother's house and come back up, did you tell your  
25 mother at that time that you had seen him?

1 A. I told her when I came out the store.

2 Q. When you came out of the store you told her. You  
3 didn't tell her before you went in?

4 A. (Witness shakes head.)

5 Q. And when you came out of the store, you said he was  
6 backed up. What car were you in?

7 A. My sister's car.

8 Q. What color is it?

9 A. White.

10 Q. And you came out of the store.

11 Did you see Donnie when you came out of the  
12 store?

13 A. Yes.

14 Q. Where was he?

15 A. He was backed up, parked beside the car.

16 Q. Was he parked to the passenger's side on the side  
17 where you get in, or was he parked to the driver's  
18 side?

19 A. On the driver's side.

20 Q. The driver's side?

21 A. Yes.

22 Q. And when you came out of the store, did he say  
23 anything to you or your mom?

24 A. Well, to me. He said -- cause I said, Leave my  
25 mama alone.

1 Q. Let me back up. Had he said something to make you  
2 say that?

3 A. No, ma'am.

4 Q. And you told him to leave your mama alone?

5 A. Yes.

6 Q. And then what did he say to you?

7 A. He said he would "F" me up.

8 Q. Tell them what he told you?

9 A. He would "F" me up.

10 Q. "F" you up.

11 Is that the first letter of a bad word?

12 A. Yes.

13 Q. Did your mother tell you to come in here and say  
14 that?

15 A. No, ma'am.

16 Q. And you love your mother; right?

17 A. Yes.

18 Q. And you would do what you can to help her; is that  
19 right?

20 A. Yes.

21 Q. Would you come in here and lie for her?

22 A. No.

23 Q. Did she tell you to come in here and lie for her?

24 A. No.

25 Q. You heard him say I will "F" you up to you?

- 1 A. Yes.
- 2 Q. What did he say to your mother?
- 3 A. "B" I'll kill you. I'll meet you in heaven.
- 4 Q. Tell them. I am sure they can't hear you.
- 5 A. He said, "B" I will kill you. I will meet you in
- 6 heaven or hell.
- 7 Q. Did your mother tell you that?
- 8 A. No, ma'am.
- 9 Q. Is that something you heard David Donnie Williams
- 10 say?
- 11 A. Yes, ma'am.
- 12 Q. And this was on April 17th?
- 13 A. Yes.
- 14 Q. What did your mom say to him?
- 15 A. I don't know what she said to him.
- 16 Q. You can tell them. You don't know what she said to
- 17 him?
- 18 A. No.
- 19 Q. But you heard him say that to your mom?
- 20 A. Yes.
- 21 Q. What happened after he said that? Did y'all stay
- 22 outside the car or did Donnie pull off? What
- 23 happened after he said that to your mom?
- 24 A. He pulled off first.
- 25 Q. Did you say -- I'm sorry.

1 Talk loud?

2 A. He pulled off first.

3 Q. He pulled off. Which way did he go?

4 A. He went down the road. And then when my mama left,  
5 we went in the parking lot.

6 Q. Let me stop you. I don't know if they understand  
7 what you are saying or not.

8 You said your mom left?

9 A. Yes.

10 Q. And tell me if I say something you didn't say, all  
11 right?

12 You said you went down to the middle of the  
13 parking lot?

14 A. Yes.

15 Q. And then what happened?

16 A. Donnie came back and came up behind us, and then my  
17 mom called the police. And when he saw that, he  
18 went by us.

19 Q. I want you to put your fingers down.

20 I know you might be a little nervous but talk  
21 to them for me, okay.

22 He saw the police and what happened?

23 A. He saw the police and then he ran down the road  
24 with the car.

25 Q. Ran down the road with the car.

1                   He was in the car; is that what you are saying?

2       A.     Yes.

3       Q.     And he drove off?

4       A.     Yes.

5       Q.     And what did the police do?

6       A.     Chased him.

7       Q.     They chased him.

8                   Have you ever seen your mom and Donnie fight?

9       A.     No.

10      Q.     Haven't seen them fighting?

11      A.     (Witness shakes head.)

12      Q.     And have you ever seen your mom get mad?

13      A.     Yes.

14      Q.     And does she ever punish you?

15      A.     No.

16      Q.     She doesn't punish you, does she?

17      A.     No, ma'am.

18      Q.     Have you ever been bad enough for her to give you a  
19             spanking?

20      A.     Yes.

21      Q.     You get spankings, don't you?

22                   Would she spank you for not telling the truth?

23      A.     Yes.

24      Q.     And you can look at the ladies and gentlemen of the  
25             jury today and tell them, look over there at them,

1 can you tell them that your mother did not tell you  
2 to say the things you are saying today?

3 A. No.

4 Q. Is that true?

5 A. Yes, ma'am.

6 Q. And you are only telling us what you saw; is that  
7 correct?

8 A. Yes, ma'am.

9 MRS. PENN: I'm going to let you answer the  
10 questions from Mr. Ausborn, okay. That's this  
11 gentleman right here. Remember to look over there  
12 and talk to the jury, okay.

13 THE COURT: Mr. Ausborn.

14 CROSS EXAMINATION

15 BY MR. AUSBORN:

16 Q. Good morning. I am Keith Ausborn. I'm going to  
17 ask you some questions. If I ask you some  
18 questions that you don't quite understand, just let  
19 me know, okay?

20 A. Okay.

21 Q. You are not nervous are you?

22 A. No.

23 Q. What's your first name again?

24 A. Quadarius.

25 Q. It is Quadarius Williams; is that right? Is that



1 close?

2 A. It's Williams.

3 Q. You love your mother, don't you?

4 A. Yes.

5 Q. And as a son, you want to do everything you can to  
6 try to please your mother and keep her happy; is  
7 that right?

8 A. Yes, ma'am -- sir.

9 Q. What grade are you in in school?

10 A. Ninth.

11 Q. Ninth grade?

12 A. Yes.

13 Q. Take a lot of subjects. Name some of the subjects  
14 that you take?

15 A. English, science, social studies, health care.

16 Q. English, science, social studies.

17 Okay. Now, these are tough subjects?

18 A. Yes.

19 Q. And with these subjects, it is not easy a lot of  
20 times to remember everything; is that right?

21 Sometimes you forget stuff like with social  
22 studies, they got dates you know.

23 It is not easy to remember all of the dates and  
24 everything; is that right?

25 A. Yes.

1 Q. And the same with science, you can't remember  
2 everything in science; is that right?

3 A. Yes.

4 Q. And, likewise, with English, you can't remember  
5 everything in English; is that right?

6 A. Yes.

7 Q. April the 17th, did somebody tell you that date?  
8 Did somebody tell you that something happened on  
9 April 17th? Somebody told you that that was the  
10 date, April 17th; is that right?

11 A. Yes.

12 Q. Who told you -- somebody told you that something  
13 happened on April 17th; is that right?

14 A. Yes.

15 Q. Who told you something happened on April 17th?

16 A. My mother.

17 Q. Who?

18 A. My mother.

19 Q. Your brother?

20 A. I said my mom.

21 Q. So your mother told you that something happened on  
22 April 17th; is that right?

23 A. Yes, sir.

24 Q. You can't recall that date yourself. Your mama  
25 told you about that date; is that right?

- 1 A. Yes.
- 2 Q. Has Donnie been like a daddy to you?
- 3 A. No.
- 4 Q. He has not?
- 5 A. No.
- 6 Q. Do you like Donnie?
- 7 A. No.
- 8 Q. You don't?
- 9 A. No.
- 10 Q. Donnie, did he live with y'all on and off?
- 11 A. Sometimes.
- 12 Q. You say that your mother spansks you when you are
- 13 bad. Donnie has never spanked you or anything, has
- 14 he?
- 15 A. No.
- 16 Q. You never saw Donnie spank your sister either; is
- 17 that right?
- 18 A. No.
- 19 Q. You never saw Donnie and your mother fighting, have
- 20 you?
- 21 A. No.
- 22 Q. You never saw Donnie hit your mother or anything,
- 23 have you?
- 24 A. No.
- 25 Q. Now, you know your mother loves you; is that right?

1 A. Yes.

2 Q. But even with mama's loving us, sometimes they get  
3 upset with us over stuff sometimes; is that right?

4 A. Yes.

5 Q. And you have seen your mother get upset; is that  
6 right?

7 A. Yes.

8 Q. And when your mother gets upset, she uses bad words  
9 sometime; is that right?

10 A. Yes.

11 Q. And you've heard your mother use bad words  
12 sometimes; is that right?

13 A. Yes.

14 Q. Have you ever heard your mother use the "B" word?

15 A. No.

16 Q. Have you ever heard your mother use the "MF" word?

17 A. No.

18 Q. But you have heard your mother use curse words; is  
19 that right?

20 A. Yes.

21 Q. And you have heard your mother use those words  
22 towards Donnie; is that right? You have heard your  
23 mother get upset?

24 A. Yes.

25 Q. And use those words towards Donnie; is that right?

1 A. Yes.

2 Q. Now, even though you have heard your mama use those  
3 words towards Donnie, Donnie never hit your mama  
4 after she used those words? Donnie never hit your  
5 mama, is that not right?

6 A. No.

7 Q. You never saw your mother with a black eye or  
8 anything like that, did you?

9 A. No.

10 Q. You never saw your mama with a busted lip or  
11 anything like that, did you?

12 A. No.

13 Q. You never saw your mother with bruises on her face  
14 or anything like that, did you?

15 A. No.

16 Q. Your mother never told you that she had to go to  
17 the doctor because somebody beat her up or  
18 anything? She never told you that, did she?

19 A. No.

20 Q. When -- now, in order for you to come here today,  
21 you sat down and talked to your mother about what  
22 all of this is about. Your mother sat down and  
23 said, Q, you got to come to court, you got to  
24 testify. She told you that; isn't that right?

25 A. Yes.

1 Q. And your mama sat down with you and she went over  
2 your testimony; is that right?

3 A. Yes.

4 Q. And she went over your testimony quite a few times  
5 to make sure you got your testimony down; isn't  
6 that right?

7 A. Yes.

8 Q. Now, is it safe to conclude that your mother went  
9 over your testimony about ten times or more than  
10 ten?

11 A. Ten.

12 Q. Ten.

13 Okay. And every time she went over your  
14 testimony, she would tell you, you got to remember  
15 to say this; is that right?

16 A. No.

17 Q. Is that what she did? Isn't that what your mother  
18 told you?

19 MRS. PENN: Asked and answered.

20 MR. AUSBORN: Has it?

21 MRS. PENN: He answered.

22 THE COURT: Yes.

23 Q. And your mother went over your testimony because  
24 she wanted you to know what to say in court; isn't  
25 that right?

1 MRS. PENN: I object, Your Honor. He can't  
2 possibly know.

3 THE COURT: Sustained.

4 Q. You needed your mother's help to remember what to  
5 say; isn't that right?

6 A. No.

7 Q. But your mama kept going over your testimony like  
8 ten times; is that right?

9 A. Yes.

10 Q. Now, Mrs. Penn right here also went over your  
11 testimony with you; is that right?

12 A. Yes.

13 Q. Now, she also went over your testimony about ten  
14 times, too; is that right?

15 A. Yes.

16 Q. With them going over your testimony about -- ten  
17 plus ten is twenty; is that right?

18 A. Yes.

19 Q. With them going over your testimony about twenty  
20 times, it made you remember what to say today; is  
21 that right?

22 A. Yes.

23 Q. And that helps you to testify today, them having  
24 gone over your testimony about twenty times; is  
25 that right?

1 A. Yes.

2 Q. It could have been more than twenty times, is that  
3 right, that they went over your testimony?

4 A. Yes.

5 Q. Could have been fifty times; is that right?

6 A. Yes.

7 Q. The more they went over your testimony, the better  
8 you remembered it; is that right?

9 A. Yes.

10 Q. Because that's how it is in school: When the  
11 teacher goes over your lesson over and over and  
12 over again, that's how you learn stuff; is that  
13 right?

14 A. Yes.

15 Q. And your mother, by going over your testimony about  
16 twenty times, Mrs. Penn going over your testimony  
17 about twenty times, fifty times or so, it made sure  
18 you remembered what to say, just like it is in  
19 school; is that right?

20 A. Yes.

21 Q. Your mama told you that David is a bad person; is  
22 that right?

23 A. Yes.

24 Q. You had never seen David being bad to your mother.  
25 You never saw David attack your mother; is that



1 right?

2 A. No.

3 Q. And you never saw David attack your sister and he  
4 never attacked you; is that right?

5 A. No.

6 Q. Okay. David has always respected you; is that  
7 right?

8 A. No.

9 Q. Say what now?

10 A. No.

11 Q. He has not?

12 A. No.

13 Q. You don't know why -- you will say David  
14 disrespected you. He disrespected you before?

15 A. No.

16 Q. He never disrespected you, did he?

17 A. Yes.

18 Q. Did he ever disrespect you?

19 A. Yes.

20 Q. Okay. When did he disrespect you?

21 A. Lots of times.

22 Q. Excuse me?

23 A. Lots of times.

24 Q. Lots of times?

25 A. Yes.

1 Q. When he disrespected you, how did he do it?

2 A. I don't know.

3 Q. When we say "disrespect," really you don't quite  
4 understand the meaning of that word; is that right?

5 A. Yes.

6 Q. You don't understand the meaning of that word; is  
7 that right?

8 A. No.

9 Q. Are you agreeing with me that you don't understand  
10 the meaning of it; is that right?

11 A. No.

12 Q. Now, David -- David had a key to the house?

13 A. No.

14 Q. Now, he lived with your mother, lived with y'all on  
15 and off over the last several years; is that right?

16 A. Yes.

17 Q. Did he ever have a key, that you know of, where he  
18 could let himself in and out?

19 A. No.

20 Q. Never had a key?

21 A. No.

22 Q. You are sure of that?

23 A. Yes.

24 Q. You ever let David in the house when your mama  
25 wasn't there?

1 A. No.

2 Q. Has your sister ever let David in the house when  
3 your mother wasn't there and you were there?

4 A. No.

5 Q. Has David ever gotten in the house while you were  
6 there, while your sister was there, and your mother  
7 not be there?

8 A. Well, he got in from the back door.

9 Q. Excuse me?

10 A. He got in from the back door.

11 Q. He came in through the back door?

12 A. Yes.

13 Q. Was it unlocked?

14 A. No. It was locked.

15 Q. It was locked?

16 A. Yes.

17 Q. You are saying he broke in?

18 A. Yes.

19 Q. Did your mama know that he would sometimes break in  
20 to get in there?

21 A. Yes.

22 Q. And she was okay with that; is that right?

23 A. Yes.

24 Q. When she didn't give him a key, he had to use  
25 whatever means he could to get in and your mama

1           knew about that and that was okay with her; is that  
2           right?

3       A.     Yes.

4       Q.     Did David ever prepare meals at the house?

5       A.     Sometimes.

6       Q.     Like breakfast, did he ever help out with  
7           breakfast?

8       A.     Sometimes.

9       Q.     Did he ever like make sandwiches for lunch and  
10          stuff like this?

11      A.     Yes.

12      Q.     What about for dinner, did he ever kind of cook  
13          dinner sometimes, maybe make some hamburgers or hot  
14          dogs or something like that, fry some chicken and  
15          stuff like that?

16      A.     Yes.

17      Q.     Wasn't the best cook then; is that right?

18      A.     (Witness laughing.)

19      Q.     Did David ever take you places?

20      A.     No.

21      Q.     You like sports? Looks like you are in pretty good  
22          shape there. You like sports?

23      A.     Yes.

24      Q.     What kind of sports do you like?

25      A.     Basketball.

1 Q. I like basketball, too. I'm not any good.

2 David ever shoot hoops with you sometimes?

3 A. No.

4 Q. Never shot hoops with you? Did he ever take you to  
5 play basketball?

6 A. No.

7 Q. Your mother, you said that you have seen your  
8 mother upset and heard her upset and use bad words;  
9 is that right?

10 A. Yes.

11 Q. And you have seen her use bad words and her to use  
12 bad words to David; is that right?

13 MRS. PENN: Asked and answered.

14 THE COURT: Sustained.

15 Q. Has your mother also been upset and used bad words  
16 to you?

17 A. Yes.

18 Q. And has she also been upset and used bad words to  
19 your sister?

20 A. Yes.

21 Q. Ever used the "B" word to you when she's upset?

22 A. No.

23 Q. Has she ever used the "MF" word?

24 A. No.

25 Q. What words does she use? It's okay to tell them.

1 Has she ever used the "S" word?

2 A. Yes.

3 Q. What other words does she use?

4 A. That's all I know.

5 Q. Huh?

6 A. The "A" word.

7 Q. Which word is that?

8 A. The "A" word.

9 Q. You can go ahead and tell us. It's okay. Go ahead  
10 and tell us what she said. Asshole; is that right?

11 A. Just A-S-S.

12 Q. And she used that on you; is that right?

13 A. Yes.

14 Q. And used it on your sister?

15 A. Yes.

16 Q. And used it on David?

17 A. Yes.

18 Q. Now, when your mama gets upset, mama gets a temper;  
19 is that right?

20 A. Yes.

21 Q. You have seen your mama get upset; is that right?

22 MRS. PENN: Asked and answered.

23 THE COURT: Sustained.

24 MR. AUSBORN: I'm about to wrap it up.

25 Q. When your mama gets upset, she throws stuff? You

1 have seen her throw stuff; isn't that right?

2 A. No, sir.

3 Q. It's okay to tell the truth.

4 MRS. PENN: He answered.

5 Q. Is that yes?

6 A. No.

7 Q. Ever seen her throw stuff?

8 A. No.

9 Q. She ever pick up stuff and like get ready to hit  
10 you with it?

11 A. No.

12 MR. AUSBORN: Nothing further. Thank you.

13 THE COURT: Redirect.

14 REDIRECT EXAMINATION

15 BY MRS. PENN:

16 Q. Tell me the fifty times that you went over the  
17 story. I want you to tell me what days they were  
18 and how many times each day.

19 A. It was every day.

20 Q. Every day. I talked to you every day?

21 A. I'm talking about me and my mom.

22 Q. Huh?

23 A. I'm talking about me and my mom.

24 Q. What about me and you? How many times did you talk  
25 to me?

1 A. About two times.

2 Q. Two times. What days were they?

3 A. Yesterday and today.

4 Q. Yesterday and today. About how much time did we  
5 spend talking about this case? Do you know what  
6 time you came to the office yesterday?

7 A. Yes.

8 Q. What time?

9 A. 7:30.

10 Q. And did I talk to you the entire time? Did I make  
11 you go over and over and over what you were going  
12 to say?

13 A. No.

14 Q. As a matter of fact, how many people did I have to  
15 talk to?

16 A. Four.

17 Q. Okay. I didn't go over your story with you ten  
18 times, did I?

19 A. No.

20 Q. What about this morning?

21 A. One.

22 Q. So that's about how many times do you count?

23 A. Five.

24 Q. You count five.

25 How many times did I talk to you yesterday?



1 A. One.

2 Q. And I talked to you how many times today?

3 A. One.

4 Q. And you are telling me, when I talked to you  
5 yesterday, I went over your testimony with you five  
6 times? That's not true mis it? It's okay. You  
7 can tell them the truth.

8 MR. AUSBORN: I'm going to interface an  
9 objection here. I think this is improper.

10 THE COURT: Sustained. Let's move on.

11 Q. In fact, I haven't talked to you ten times, have I?

12 A. No.

13 Q. And you haven't gone over your story ten times with  
14 me, have you?

15 A. No.

16 Q. And not twenty-five times, have you?

17 A. No.

18 Q. And was your mother trying to get away from Donnie?

19 A. Yes.

20 Q. Did you ever have to stay with somebody else?

21 A. Yes.

22 Q. Who do you stay with?

23 A. My sister.

24 Q. Anybody else?

25 A. No.

1 Q. How long did you stay with your sister?

2 A. About four months.

3 Q. About four months?

4 A. Yes.

5 Q. You said you went over your testimony with your  
6 mom?

7 A. Yes.

8 Q. And you said that was about fifty times?

9 A. (Witness laughs.) No.

10 Q. Huh? That's what he said, isn't it? You didn't go  
11 over your testimony fifty times with your mama, did  
12 you?

13 A. No.

14 Q. It wasn't that many times. And each time when you  
15 went over it, did she say -- did she sit down and  
16 say, this is what you will have to say?

17 A. No.

18 Q. Did you remember that by yourself?

19 A. Yes.

20 Q. Tell me why you would have remembered that by  
21 yourself? What made that stand out in your mind?

22 A. Because I think about it every day.

23 Q. You think about it every day. What do you think  
24 about it every day? Were you afraid?

25 A. Nope.

1 Q. Did you think about it because he was threatening  
2 to kill your mama?

3 A. Yes.

4 Q. Was he threatening to fuck you up?

5 A. Yes.

6 Q. That's why you think about it, ain't it?

7 A. Yes.

8 Q. And that's what he told you, isn't it?

9 A. Yes.

10 Q. And that's nothing your mama told you to say, is  
11 it?

12 A. No.

13 Q. And I want you to be honest with these ladies and  
14 gentlemen of the jury. I know Mr. Ausborn is  
15 smooth talking and he got you to say some stuff,  
16 but just tell them point blank if your mama asked  
17 you to get up here and lie or say anything that  
18 wasn't true. Tell them.

19 Did she ask you to say something that wasn't  
20 true?

21 A. No.

22 Q. You sure?

23 A. Uh-huh (affirmative response).

24 Q. You just thinking about everything that you talked  
25 about with her?

1 A. Yes.

2 Q. Has any of it been a lie?

3 A. No.

4 Q. Did you tell these ladies and gentlemen of the jury  
5 a lie when you told them what David Donnie Williams  
6 did down at the AG on April 17th? Did you tell  
7 them a lie?

8 A. No.

9 Q. No. Tell them. Tell them no.

10 If you didn't lie, say, I did not lie to you.

11 Tell them.

12 A. I did not lie.

13 Q. Look at them and tell them.

14 A. I did not lie.

15 Q. You didn't lie for your mama?

16 A. No.

17 Q. You didn't lie for David Donnie Williams?

18 A. No.

19 Q. You didn't lie for anybody, did you?

20 A. No.

21 Q. And you came up here and told the truth. And you  
22 know what the truth is, don't you?

23 A. Yes.

24 RECROSS EXAMINATION

25 BY MR AUSBORN:

1 Q. "Q", you don't want to -- you are trying to get  
2 through this.

3 This is the first time you have ever been on  
4 the stand testifying before; is that right?

5 Not an everyday occurrence for you; is that  
6 right?

7 A. Yes.

8 Q. Now, when I asked you earlier, of course you know  
9 what it means to be up under oath and to tell the  
10 truth and nothing but the truth; is that right?  
11 You understand that; is that right?

12 A. Yes.

13 Q. When you have testified, everything that you said  
14 on the stand has been the truth; is that right?

15 A. Yes.

16 Q. As best you can recall it; is that right?

17 A. Yes.

18 Q. And when I asked you questions, you understood  
19 those questions; is that right?

20 A. Yes.

21 Q. And the answers that you gave me were answers that  
22 you, in your heart, you, in your mind, gave because  
23 you knew and thought that these were correct; is  
24 that right?

25 A. Yes.

1 Q. And when you told me that your mom and Mrs. Penn  
2 had gone over your testimony about fifty times, you  
3 didn't count all of the times but you knew that  
4 fifty was about a close number and you knew that;  
5 isn't that right?

6 A. Yes.

7 Q. Your mama has been going over your testimony for  
8 months now; is that right?

9 A. Yes.

10 Q. And when she has been going over your testimony now  
11 for months, like every day, she'd say, Quin (sic),  
12 make sure you tell the Court, and she would tell  
13 you, make sure you tell them this and make sure you  
14 tell them that; is that right?

15 A. Yes.

16 Q. And so when your mama reminds you day in and day  
17 out this is what you need to say, that's what  
18 sticks out in your mind; is that right? That's  
19 what sticks out in your mind because your mama  
20 keeps telling you about it; is that right?

21 A. Yes.

22 Q. And so when you are on the stand today, you don't  
23 have a problem with telling the ladies and  
24 gentlemen of the jury what happened because your  
25 mama made sure you memorized that by going over it

1 day in and day out; is that right?

2 A. Yes.

3 Q. Now, when Mrs. Penn went over your testimony with  
4 you, she told you to remember to say what mama had  
5 already told you to say; is that right?

6 A. No.

7 Q. Huh? It's okay to tell the truth. Isn't that  
8 right?

9 In other words, your mama told you what to say,  
10 and then when you talked to Mrs. Penn. And  
11 Mrs. Penn reminded you to say what mama had already  
12 told you to say; is that right?

13 A. No.

14 Q. She didn't tell you to say anything different,  
15 though, than what mom had already told you to say;  
16 is that right? They pretty much told you to say  
17 the same thing; is that right?

18 A. No.

19 Q. Now, did they tell you they were out to get David?

20 A. Yeah.

21 Q. You know David is on trial; right?

22 A. Yes.

23 Q. And they told you they was out to get David; is  
24 that right?

25 A. Yes.

1 Q. And they told you that they was out to get David  
2 and they was going to try to send David to prison  
3 or jail; is that right?

4 A. Yes.

5 Q. And they told you they needed your help; am I right  
6 about that?

7 A. Yes.

8 Q. And you love your mama; am I right about that?

9 A. Yes.

10 Q. And loving your mama means you are going to do  
11 whatever it takes to help your mama; am I right  
12 about that?

13 A. Yes.

14 Q. Because you don't want to disappoint mama; am I  
15 right about that?

16 A. Yes.

17 Q. So when mama tells you, we going to get David, and  
18 she tells you, remember to say this, that's what  
19 you going to do; am I right about that? It's okay  
20 to tell the truth.

21 That's what you are going to say; isn't that  
22 right? You are keeping your commitment to mama in  
23 helping to get David; am I right about that?

24 A. Yes.

25 Q. And that's why you are here; am I right about that?



1 A. Yes.

2 MR. AUSBORN: Nothing further. Thank you.

3 FURTHER REDIRECT EXAMINATION

4 BY MRS. PENN:

5 Q. Quadarius, when did I tell you we were out to get  
6 David Donnie Williams? Did I tell you that this  
7 morning? Did I tell you that yesterday? I have  
8 never told you that, have I? It's okay for you to  
9 tell the truth.

10 I have never told you that we were out to get  
11 David Donnie Williams, did I? I know you told him  
12 one thing, but look over there. Don't even look at  
13 me. Tell the ladies and gentlemen of the jury the  
14 truth, because they need to know. Did I tell you  
15 that we were out to get David Donnie Williams?

16 A. Yes.

17 Q. When? Think back and tell me when. I want you to  
18 take as much time as you need, and I know you can't  
19 remember everything and I know you are answering  
20 his questions because you think you got to say --  
21 you are answering questions because he is being  
22 real polite; isn't that right? But I want you to  
23 tell them when I told you we were out to get David  
24 Donnie Williams. Can you remember that?

25 A. No.

1 Q. Why did you tell him that that's what I told you?

2 MR. AUSBORN: I think this is asked and  
3 answered.

4 THE COURT: Sustained.

5 MRS. PENN: Did I ask him that?

6 THE COURT: Any other questions?

7 MRS. PENN: I appreciate it.

8 THE COURT: Next witness.

9 (Whereupon the witness left the stand.)

10 ANTHONY BLAKELY

11 having first been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MRS. PENN:

14 Q. State your name for the jury, please.

15 A. Anthony Blakely.

16 Q. Talk loud so she can hear you and she can write it  
17 on her machine.

18 A. Anthony Blakely.

19 Q. What kind of work do you do?

20 A. Construction.

21 Q. How do you know David Donnie Williams?

22 A. We went to school together.

23 Q. How long have you known him?

24 A. Just about my whole life.

25 Q. Just about your whole life.

1 Do you consider him a friend of yours?

2 A. Yes, ma'am.

3 Q. Do you remember specifically the date of April 17th  
4 of this year?

5 A. Yes, ma'am.

6 Q. Why do you remember the date April 17th?

7 A. Yes, ma'am.

8 Q. Why do you remember that day?

9 A. I like to have lost my life that day.

10 Q. Why did you almost lose your life? Who almost  
11 caused you to lose your life?

12 A. Donnie Williams.

13 Q. I am holding a statement that you wrote on April  
14 17th, 2002. Look over that and make sure it is  
15 your statement?

16 THE COURT: '04 or '02. You said '02. Did you  
17 mean '04?

18 MRS. PENN: '04. Thank you.

19 Q. What is that to you?

20 A. This is the statement that I wrote.

21 Q. And is that your signature on the statement?

22 A. Yes, ma'am.

23 Q. And that is on April 17th?

24 A. Yes, ma'am.

25 Q. Does that fairly and accurately depict the

1 statement that you gave to the police officers that  
2 day?

3 A. Yes, ma'am.

4 MRS. PENN: Your Honor, I am marking this as  
5 State's Exhibit 3 and offer it into evidence.

6 MR. AUSBORN: No objection.

7 MRS. PENN: Permission to publish.

8 Q. First of all, let me do this so we won't be here  
9 two hours when we get to cross-examination.

10 Do you have a criminal record?

11 A. Yes, ma'am.

12 Q. And what is that for?

13 A. Burglary.

14 Q. Burglary?

15 A. Yes, sir.

16 Q. And you know that has to do with you not telling  
17 the truth, you breaking in and stealing something?

18 A. Yes, ma'am.

19 Q. And you went to prison for that?

20 A. Yes, ma'am.

21 Q. And served time for it?

22 A. Yes, ma'am.

23 Q. So you are a convicted felon?

24 A. Yes, ma'am.

25 Q. Is it just one time?

1 A. Four times.

2 Q. You are a four-time convicted felon?

3 A. Yes, ma'am.

4 Q. Did I talk to you prior to you coming in here to  
5 testify?

6 A. Yesterday is when I first seen you.

7 Q. Did I put words in your mouth? Did I tell you what  
8 to say when you got up here on the stand?

9 A. No, ma'am.

10 Q. What did I ask you to do?

11 A. Tell the truth.

12 Q. To come in here and tell the truth. And it is  
13 important that these ladies and gentlemen of the  
14 jury know that.

15 Do you know what the truth is?

16 A. Yes, ma'am.

17 Q. When you were convicted of burglary four times, did  
18 you plead guilty?

19 A. Yes, ma'am.

20 Q. Why?

21 A. Because I was guilty.

22 Q. Because you did it. And you came in here and told  
23 the truth about it, didn't you?

24 A. Yes, ma'am.

25 Q. And on April 17th, who were you with?

1 A. Donnie.

2 Q. Donnie Williams.

3 Tell me where you met up with Donnie.

4 A. We came down to the Big Bear and I asked him  
5 because -- I wanted him to drop me off.

6 Q. Where did you want him to drop you off at?

7 A. Down in the bottom.

8 Q. But you made a detour to the Big Bear; is that  
9 right?

10 A. Yeah.

11 Q. Now known as AG's Grocery?

12 A. Right.

13 Q. Who did you see down there?

14 A. I seen her down there.

15 Q. And was she already there when you pulled up?

16 A. Yes, ma'am.

17 Q. Who was driving in your vehicle?

18 A. Donnie.

19 Q. And you were a passenger?

20 A. Yes, ma'am.

21 Q. How did you pull into the parking space?

22 A. We pulled in, and I told him I wanted him to drop  
23 me off. I wanted him to go in the store and get me  
24 some matches because my hip was hurting me and  
25 that's why I couldn't walk.

1 Q. Did you get out and go in the store?

2 A. Yes, ma'am, I did.

3 Q. And tell us what happened.

4 A. I went in and got me some matches, and I came out.  
5 When I came out, I told him I wanted him to drop me  
6 off because my hip was hurting, because I don't  
7 know her. You know, what I am saying. But they  
8 was talking. I didn't hear no threats or nothing  
9 like that.

10 Q. You didn't hear no threats?

11 A. No, ma'am.

12 Q. And this is your friend, isn't it?

13 A. Yes.

14 Q. But you knew they were at the Big Bear; right?

15 A. Say that again.

16 Q. You know they were down at the Big Bear?

17 A. Yeah, because I was there.

18 Q. Because you were in the car, weren't you?

19 A. Yes.

20 Q. Tell me where you went when you left the Big Bear.  
21 Who pulled out first, you or Ms. Williams?

22 A. Who pulled out?

23 Q. Uh-huh (affirmative response).

24 A. I think we did.

25 Q. And which way did you go?

1 A. We was going like towards -- back towards the  
2 trailer park.

3 Q. Okay. Now, tell me why would you tell me that you  
4 didn't hear any threats or anything.

5 Why you felt like that was important for you to  
6 say?

7 A. Because I didn't.

8 Q. But I haven't even asked you about that. I want to  
9 know why you thought that was important to say.

10 A. Because of what this case is about.

11 Q. Okay. So I never asked you about any threats. You  
12 just decided to tell me that; is that correct?

13 A. Yeah.

14 Q. And you didn't hear anything, did you?

15 A. No, I didn't hear either one of them.

16 Q. You didn't hear not a word that was said?

17 A. I didn't hear either one of them make no threats.  
18 They was talking, you know, how a man and woman  
19 talk.

20 Q. Were they fussing?

21 A. A little bit.

22 Q. You didn't hear any cuss words, did you?

23 A. A little bit.

24 Q. What cuss words did you hear?

25 A. I can't remember exactly.



1 Q. I understand, but you heard some curse words,  
2 didn't you?

3 A. A little bit.

4 Q. You are going to tell me you didn't hear Donnie  
5 tell her fourteen-year-old son, I'll fuck you up?

6 A. No, I didn't.

7 Q. And you are going to sit there and tell me that  
8 under oath?

9 A. No, I didn't.

10 Q. And you didn't hear him tell Ms. Callie Williams,  
11 I'll kill you? Bitch, I'll kill you?

12 A. No, ma'am.

13 Q. And you were right there in the car with Donnie,  
14 weren't you?

15 A. Yes, ma'am, I was.

16 Q. And when you left, you said you went towards the  
17 trailer park; is that right?

18 A. Yes, ma'am.

19 Q. And what did you do when you went that way?

20 A. That's when, you know, we took off in the  
21 high-speed car chase there.

22 Q. What in the world -- what was going on?

23 A. I don't know.

24 Q. You don't know why you were running from the  
25 police?

1 A. No, I just got caught...

2 Q. They just got behind y'all because y'all went to  
3 Big Bear to get some matches?

4 A. No. I just got caught in the middle.

5 Q. Caught up in what?

6 A. I reckon a disagreement.

7 Q. A disagreement that you didn't even know went on,  
8 did you?

9 A. No, really I don't.

10 Q. Tell me about the high-speed chase.

11 A. Well, we got in a high-speed chase.

12 Q. Did you ask Donnie what was going on?

13 A. I asked him, I said, what's going on? And I asked  
14 him several times you know, let me out. My life  
15 was in danger. I ain't never been into nothing  
16 like that before.

17 Q. Did he let you out?

18 A. No, I couldn't get out..

19 Q. Why not?

20 A. Because we were running too fast.

21 Q. Any idea about how fast you were going?

22 A. About ninety-five or a hundred.

23 Q. Who was chasing you?

24 A. Mr. Freeman.

25 Q. You did have some indication that something bad was

1 going on since you were involved in a high-speed  
2 chase, didn't you?

3 A. Definitely, yeah.

4 Q. Had you run the stop sign?

5 A. (No response.)

6 Q. I mean before the high-speed chase, had you run a  
7 stop sign?

8 A. Before the high speed chase?

9 Q. Yeah, before the high-speed chase. Did you run  
10 through the traffic light?

11 A. No, it wasn't no traffic light.

12 Q. Did you steal something out of the AG?

13 A. No.

14 Q. Just running from the police and you don't have any  
15 idea why?

16 A. No, I didn't.

17 Q. And tell us where all you went on the high-speed  
18 chase and about how long it lasted?

19 A. I'd say about fifteen or twenty minutes.

20 Q. Fifteen to twenty minutes.

21 Where all did you go?

22 A. Well, we went down 29. The next thing I know, we  
23 end up on County Road 61.

24 Q. What happened on 61?

25 A. We crashed. We crashed twice, though.

1 Q. You crashed twice. Tell us about the first crash.

2 A. When we crashed into the telephone pole.

3 Q. Crashed into a telegram pole and didn't stop?

4 A. You know, the car spun about two or three times.

5 Q. And he didn't stop and let you out or wait for the  
6 police to come or any medical attention? Didn't do  
7 any of that, did you?

8 A. No.

9 Q. What happened after you crashed into the telegram  
10 pole and spun around two or three times in the  
11 road?

12 A. Took off again.

13 Q. And then you had another crash?

14 A. Yeah.

15 Q. Where did you crash the second time?

16 A. Like on the dirt road where Mr. Red Williams live  
17 at.

18 Q. That's on County Road 61?

19 A. 61, right.

20 Q. What did you crash into that time?

21 A. We crashed into some wire fences or trees.

22 Q. Did you jump a ditch or was the wire fence and  
23 ditch in the road?

24 A. It was on the side of the road, because it like  
25 knocked me unconscious for a minute.

1 Q. Knocked you unconscious?

2 A. Yeah.

3 Q. When you came to, who did you see?

4 A. Mr. Freeman.

5 Q. What about David Donnie Williams?

6 A. I didn't see him.

7 Q. Nowhere to be seen, was he?

8 A. No, ma'am.

9 Q. When was the next time you seen David Donnie  
10 Williams?

11 A. It had been a minute. It had been a minute.

12 Q. Knocked you unconscious, your friend, and he didn't  
13 stick around to see if you were all right, did he?

14 A. No.

15 Q. And let me get this out in the open, so we can take  
16 up a little less time on cross.

17 Have I promised you anything for this?

18 A. No, ma'am.

19 Q. Are you in trouble right now?

20 A. No, ma'am.

21 Q. Do you have a case pending?

22 A. No, ma'am.

23 Q. You ain't coming up for probation on December 9th?

24 A. December 9th?

25 Q. Yes.

1 A. No.

2 Q. And the first time you heard from me about this  
3 case was when?

4 A. Yesterday.

5 Q. Yesterday. And you did get a subpoena, didn't you?

6 A. Yes, ma'am.

7 Q. And did I talk to you before you got your subpoena?

8 A. No, ma'am.

9 Q. Who gave you your subpoena?

10 A. Mr. Williams.

11 Q. Deputy Williams?

12 A. Deputy Williams.

13 Q. Deputy sheriff brought you your subpoena?

14 A. Right.

15 Q. And the first time I talked to you about that was  
16 yesterday morning; is that correct?

17 A. Yes, ma'am.

18 Q. The next time you saw Donnie, where was he?

19 A. Ma'am?

20 Q. When was the next -- when and where was the next  
21 time you saw Donnie? I know you said it had been a  
22 minute. When was the next time?

23 A. Yesterday.

24 Q. That's the next time you seen him since the crash?

25 A. Yes, ma'am.

1 Q. Did he talk to you?

2 A. No, ma'am.

3 Q. Didn't attempt to talk to you?

4 A. No, ma'am.

5 Q. Talk to his lawyer?

6 A. No, ma'am.

7 Q. You didn't talk to anybody.

8 What about John Taylor? John Taylor? Do you  
9 know John Taylor?

10 A. Yeah, I know him.

11 Q. Did you talk to him?

12 A. Who, I did?

13 Q. Yes.

14 A. Yes, ma'am. We was talking.

15 Q. Did you talk about this case?

16 A. Yeah, some of it was.

17 Q. But you haven't seen Donnie, have you?

18 A. No, ma'am.

19 Q. Haven't seen him since you were knocked unconscious  
20 on that day?

21 A. Right.

22 Q. And how long had you been at the Big Bear? And  
23 tell me what happened before you actually went  
24 into the store to get matches.

25 A. Nothing.

1 Q. Nothing happened?

2 A. No, ma'am.

3 Q. Where did Donnie pick you up at?

4 A. We was over on Johnson Street.

5 Q. On Johnson Street?

6 A. Yes, ma'am.

7 Q. Where did you go when you left Johnson Street?

8 A. We went to car wash to clean his car out and then  
9 we went to the Big Bear and then I told him to drop  
10 me off down in the bottom.

11 Q. And let me ask you about after you left the car  
12 wash en route to the Big Bear.

13 Which car wash did you go to?

14 A. The old one.

15 Q. What's the old one? The Robo?

16 A. Yes, ma'am.

17 Q. And is that right here across from CVS?

18 A. Yes, ma'am.

19 Q. And when you left the car wash, you went straight  
20 to the AG?

21 A. Yes, ma'am.

22 Q. By what route? Which way did you take to get to  
23 the AG?

24 A. Let's see. We came back out and then came back --  
25 I can't name the streets, but then we came back



1 over the overhead bridge.

2 Q. Overhead bridge?

3 A. Yeah.

4 Q. When you left the Robo, did you take a right or  
5 left?

6 A. Took a left.

7 Q. And took that left right there by Greenway?

8 A. No, before we got to Greenway.

9 Q. Took a left before you got to Greenway?

10 A. Right.

11 Q. And you went down, what was that? Montgomery  
12 Avenue?

13 A. Yeah, I think so.

14 Q. Would that be down by the park?

15 A. Right.

16 Q. And then which way did you go?

17 A. Then we got to the top of the hill, took a right  
18 and then we took another left.

19 Q. Took a right at the top of the hill?

20 A. No.

21 Q. You came up by Carter Funeral Home?

22 A. No. Hold on. When we got to the top of the hill,  
23 we took a right at the old motel and went straight  
24 down.

25 Q. Are you on Prairie Street now?

- 1 A. Right. We are on the main street now.
- 2 Q. And you go down to where?
- 3 A. All the way down to like where the old motel was,  
4 took a left and everything.
- 5 Q. Okay. And you turned right there where that gas  
6 station was?
- 7 A. Yeah, took a left.
- 8 Q. The Amoco service station?
- 9 A. Yeah.
- 10 Q. Did you at any time park on the roadway in front of  
11 Ms. Callie Williams' house?
- 12 A. No, ma'am.
- 13 Q. Never did that?
- 14 A. No, ma'am.
- 15 Q. So if another witness come in here and said, I saw  
16 Donnie Williams sitting across the street from  
17 Callie Williams' house, you are calling them a lie;  
18 is that correct?
- 19 A. Calling Donnie a lie?
- 20 Q. No, huh-uh. If a witness came in here and said, I  
21 saw Donnie Williams, on that day that he got in the  
22 chase with the police, parked right across the  
23 street from Ms. Callie Williams' house, that would  
24 be a lie?
- 25 A. Yeah, I would call them a lie.

1 Q. You would call them a lie?

2 A. Yes, I would.

3 Q. And how long did you sit in the Big Bear parking  
4 lot?

5 A. We was sitting for a minute, because they was  
6 talking. They was in that little discussion. I  
7 really wasn't into it.

8 Q. Was she there when you pulled up?

9 A. Yeah, I think she was.

10 Q. Was she in the store or sitting in the car?

11 A. I think she was inside the store.

12 Q. She was inside the store. You gave this statement  
13 to the police officer on that day; is that correct?

14 A. Yes, ma'am.

15 Q. Would you tell me in there where it says you got  
16 out and went in the store and bought some matches  
17 and when you came back out, David Donnie Williams  
18 was talking to a woman?

19 A. No, but I did go in the store.

20 Q. I want to know if it says that in your statement?

21 A. No, it is not in the statement.

22 Q. So your memory is more fresh today than it was on  
23 April 17th when you gave this statement to the  
24 police?

25 A. No. It was really fresh that day.

1 Q. You said, I asked Donnie to drop me off in the  
2 bottom, and the next thing I know, he started  
3 talking to this woman?

4 A. Right.

5 MRS. PENN: No further questions.

6 THE COURT: Cross.

7 CROSS-EXAMINATION

8 BY MR. AUSBORN:

9 Q. Mr. Blakely, I didn't subpoena you to be here  
10 today; is that right?

11 A. No.

12 Q. The State subpoenaed you to be here; is that right?

13 A. Okay.

14 Q. You've seen me around the courthouse before is that  
15 right?

16 A. Yes, sir.

17 Q. And as you testified, you are an acquaintance of  
18 Mr. David Donnie Williams; is that right?

19 A. Yes, sir.

20 Q. That friendship, that association, is not going to  
21 justify you taking the stand and lying for Mr.  
22 Donnie Williams, is it?

23 A. No. No, sir.

24 Q. And it is not going to justify you taking the stand  
25 and lying for the State of Alabama either; is that

1 right?

2 A. No, sir.

3 Q. You're neutral in this case. You are not for David  
4 Donnie Williams and you are not for the State of  
5 Alabama; is that right?

6 A. Yes, sir.

7 Q. I appreciate your candidness and this court does  
8 likewise in telling us about your prior criminal  
9 history. That's behind you; right?

10 A. Yes, sir.

11 Q. And you have paid your debt to society and that's  
12 behind you; is that right?

13 A. Yes, sir.

14 Q. Now, when you gave your statement, everything that  
15 happened that date is not in this statement; is  
16 that right?

17 A. No, sir.

18 Q. In other words, every little detail --

19 A. Right.

20 Q. -- is not in the statement; is that right?

21 A. Yes, sir.

22 Q. And as you have testified, him dropping you off to  
23 get some matches, that's a little minor detail that  
24 was conveniently left out; is that right?

25 A. Yes, sir.

1 Q. You being knocked unconscious and et cetera, that's  
2 also a detail that was left out; is that right?

3 A. Yes, sir.

4 Q. So it is fair to say that every detail that  
5 happened, it is not within the statement; is that  
6 right?

7 A. Yes, sir.

8 Q. Okay.

9 Nobody -- did you write this or did an officer  
10 write it for you?

11 A. I wrote it, yes, sir.

12 Q. Okay.

13 The officer never told you, tell me every  
14 detail, whether minor or major, what happened?

15 He never told you that; is that right?

16 A. No, sir.

17 Q. He just said something to the effect of give me an  
18 idea of what happened that day, just give me a  
19 short statement?

20 A. Statement.

21 Q. And that's what you did; is that right?

22 A. Yes, sir.

23 Q. I want to take you back to that date.

24 Before Donnie picked you up, was he upset?

25 A. No, sir.

1 Q. Was he in a foul mood or anything like that?

2 A. No.

3 Q. You've fellowshiped (sic) with Donnie in the past.  
4 Is Donnie an easy-going type fellow for the most  
5 part?

6 A. Yes, he is.

7 Q. He is not a temperamental type?

8 A. No, not really.

9 Q. A person that gets riled up easily?

10 A. No.

11 Q. Now, when you stopped off at the store after you  
12 left the car wash, you told Donnie you needed to  
13 stop off at the store to get some matches; is that  
14 right?

15 A. Yes, sir.

16 Q. Donnie, didn't make the decision that, hey, I need  
17 to stop here at the store; you directed Donnie, can  
18 you stop by the store and get some matches; is that  
19 right?

20 A. Yes, sir.

21 Q. That was not Donnie's decision; that was your  
22 decision?

23 A. Right.

24 Q. And Donnie did that; is that right?

25 A. Yes, sir.

1 Q. Now, when you stopped, Ms. Williams was coming out  
2 of the store; is that right?

3 A. Yes, she was.

4 Q. Had you already gone in the store to get your  
5 matches and when you were coming out, she was  
6 coming out?

7 A. Right.

8 Q. And did Donnie get out of the car at that point or  
9 was he already out of the car?

10 A. No. I didn't see Donnie get out of the car. He  
11 was sitting in the car.

12 Q. Now, at that point, did Ms. Williams come over to  
13 Donnie's car?

14 A. No.

15 Q. The cars proximity-wise, were they parked parallel  
16 to one another?

17 A. Kind of parallel. She was parked in like that and  
18 we was like that (indicating).

19 Q. Okay.

20 Now, did I understand you to say that Donnie  
21 was in the car or he was out of the car?

22 A. He was sitting inside the car.

23 Q. He was like leaning up against the car?

24 A. No. He was sitting inside.

25 Q. He was inside the car?



1 A. Right.

2 Q. Did he get out of the car at any time?

3 A. No, I didn't see him get out.

4 Q. And as Ms. Williams was getting in their car, did  
5 they start communicating with one another? Is that  
6 what happened?

7 A. Yeah, they was talking.

8 Q. You didn't see Donnie get out of the car and get  
9 aggressive with Ms. Williams or anything like that,  
10 did you?

11 A. No, sir.

12 Q. And you were physically right there to where, if  
13 something like that would have happened, you would  
14 have had a perfect observation of that as it  
15 occurred; right?

16 A. Right.

17 Q. Now, proximity-wise, the door is right here, tell  
18 us how far Donnie was to Ms. Callie Williams as  
19 they were talking. Do I need to go further up or  
20 do I need to go back, in terms of how close they  
21 were to one another?

22 A. About a distance like that.

23 Q. About right here?

24 A. Yeah, about right there to right there.

25 Q. So he was sitting in his car and then she was

1 standing right there outside of the car; is that  
2 right?

3 A. Yeah, she was standing outside of her car.

4 Q. Outside of her car?

5 A. Right.

6 Q. And they started communicating with one another; is  
7 that right?

8 A. Yeah, they was talking.

9 Q. And you could hear that there was some  
10 communication, but exactly what was happening, you  
11 weren't trying to focus in on what was happening  
12 because that's their business; is that right?

13 A. Right.

14 Q. But, clearly, had Mr. David Donnie Williams made a  
15 threat to Ms. Callie Williams, you would have heard  
16 that, isn't that right?

17 MRS. PENN: I object, Your Honor. He has  
18 already said he didn't hear.

19 MR. AUSBORN: I didn't ask him that question,  
20 though.

21 THE COURT: He can answer that.

22 Q. Now, you never heard Mr. David Donnie Williams  
23 trying to restrain Ms. Callie Williams from leaving  
24 telling her, you ain't going anywhere or anything  
25 like that?

1 A. Nah. I wasn't really in to it, because I was  
2 intoxicated too, a little bit.

3 Q. You were intoxicated?

4 A. Yeah, I was intoxicated a little bit.

5 Q. Okay. Let's talk about that.

6 Now, when you say intoxicated --

7 A. Alcohol.

8 Q. -- do you mean you had a little buzz or was you  
9 really drunk, because there is a big difference in  
10 the two?

11 A. Well, I had been drinking.

12 Q. You had a little buzz?

13 A. Yeah.

14 Q. So, really, intoxication is kind of like an  
15 overstatement?

16 A. Right.

17 Q. Had a little buzz; is that right?

18 A. Yeah.

19 Q. Feeling good on that day?

20 A. Right.

21 Q. But notwithstanding the fact that you had a buss  
22 that day, it didn't affect your memory and does not  
23 affect your memory today in terms of what happened;  
24 is that right?

25 A. No, sir.

1 Q. When you got knocked out that day, you weren't  
2 knocked out because you had an after effect from  
3 the alcohol or anything like that, was you?

4 A. No. It came from the crash.

5 Q. Now, you've heard of instances -- and I know you  
6 paid your debt to society. You've heard of  
7 instances where you know people, when the police  
8 come around, people kind of get nervous? You have  
9 seen that, haven't you?

10 A. True.

11 Q. And you know of instances when the police come  
12 around in Bullock County, people get nervous?

13 MRS. PENN: Your Honor, I object.

14 A. Yes, sir.

15 THE COURT: Go ahead.

16 Q. Bullock County law enforcement come around, nothing  
17 unusual about people getting nervous and  
18 scattering?

19 A. Yes, sir.

20 Q. And that's what Donnie did on that day; is that  
21 right?

22 A. Yes, sir.

23 Q. Donnie Williams, to the best of your knowledge,  
24 based upon your past association with Donnie, you  
25 don't think Donnie would have deliberately put his

1 safety and your safety at risk?

2 A. No, I don't think he would have.

3 Q. I know that he sped off, you know, and was trying  
4 to get away, but you know, people do reckless and  
5 foolish things?

6 A. Yeah, it freaked me out that day for real.

7 Q. And that was out of character for Donnie; is that  
8 right?

9 A. Yes, sir.

10 Q. And you rode in the car before with Donnie?

11 A. Yes, sir.

12 Q. Nothing like that ever happened before; is that  
13 right?

14 A. No, sir.

15 Q. Did you ever hear Ms. Callie Williams tell Donnie  
16 on that day, Leave me alone? Have you ever heard  
17 her say anything like that?

18 A. Yes, she did.

19 Q. She did?

20 A. Yes, sir.

21 Q. She told Donnie to leave her alone on that day?

22 A. She said she didn't want him no more.

23 Q. She said she didn't want him no more?

24 A. Yes, sir.

25 Q. Okay. Let's talk about that. Now, did you hear

1 Donnie tell her, I don't want you? Did Donnie tell  
2 her that, he don't want her?

3 A. No, he didn't.

4 Q. Could it have been that Donnie told her that and  
5 you didn't hear it?

6 MRS. PENN: I object, Your Honor. He already  
7 said he didn't hear it.

8 MR. AUSBORN: It's a fair question, Counselor.

9 THE COURT: Restate the question.

10 Q. Now, before you heard her say, I don't want you no  
11 more, you didn't immediately hear what Donnie had  
12 told her?

13 A. No, not really, because like I said, I wasn't  
14 really in to it. I could hear some things, but I  
15 wasn't listening.

16 Q. And it is possible that Donnie may have told her, I  
17 don't want you, leave me alone?

18 MRS. PENN: I object, Your Honor. He has  
19 already said he didn't hear it.

20 THE COURT: Sustained.

21 Q. Now, Donnie and after she told Donnie, I don't want  
22 you anymore, you will didn't see Donnie get out of  
23 the car and say, Callie, no, you ain't leaving me?  
24 He didn't do nothing like that, did he?

25 A. No, sir.

1 Q. He didn't try to stop her from getting in her car,  
2 did he?

3 A. No, sir.

4 Q. He didn't get in his car and trail her, did he?

5 A. No, sir, we turned around.

6 Q. In fact, he left before she left; isn't that right?

7 A. Right, we did.

8 Q. You didn't hear her say, I'm going to call the  
9 police on you, leave me alone? She didn't say  
10 nothing like that, did she?

11 A. No, I didn't hear her say that.

12 Q. And when you saw the police, Mr. Freeman, when  
13 y'all first -- he first made contact with you-all,  
14 did he have his lights on first before Donnie  
15 started speeding or Donnie started speeding first  
16 and then he blue-lighted him?

17 A. He started speeding first.

18 Q. First?

19 A. Right.

20 Q. Nothing unusual about a police officer --

21 A. Right.

22 Q. -- enforcing the law?

23 A. Right.

24 Q. You speed, they stop you; am I right about that?

25 A. Yeah, you are right about that.

1 Q. So he started speeding and he got blue-lighted and  
2 the chase was on; is that right?

3 A. Yes, sir.

4 Q. You've heard about people committing traffic  
5 violations, speeding, running a red light, don't  
6 want a ticket, so they figure my engine can outrun  
7 law enforcement engine and then at some point  
8 realize they made a poor calculation and get  
9 stopped?

10 That's what happened in this case; is that  
11 right?

12 A. Yes, sir.

13 Q. He thought he could outrun Mr. Freeman; is that  
14 right?

15 A. Yes, sir.

16 Q. And he wasn't successful; is that right?

17 A. No, sir.

18 Q. Could you tell it was Mr. Freeman behind you?

19 A. I seen Mr. Freeman when we pulled out.

20 Q. When you pulled off?

21 A. Yes, sir.

22 Q. Now, Mr. Freeman, tell us about Mr. Freeman. Is he  
23 a tough-minded officer?

24 A. He's a good person.

25 Q. He's a good person.



COURT OF CRIMINAL APPEALS NO. CR 04-0846

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF Bullock COUNTY, ALABAMA

CIRCUIT COURT NO. CC-2004-144

CIRCUIT JUDGE Hon. L. Bernard Smithart

Type of Conviction / Order Appealed From: Stalking

Sentence Imposed: 38 years

Defendant Indigent: ☒ YES ☐ NO

David Donnie Williams

NAME OF APPELLANT

Hon. Donald E. Spencer 334-269-1934  
(Appellant's Attorney) (Telephone No.)

547 S. Lawrence Street

(Address)

Montgomery, AL 36104

(City)

(State)

(Zip Code)

V.

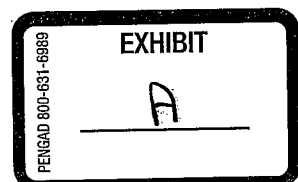
STATE OF ALABAMA

NAME OF APPELLEE

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter  
name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)



1 Kind of strange Donnie taking off when he sees  
2 Mr. Freeman. You don't know what type of past  
3 association Freeman has had with Donnie; is that  
4 right?

5 A. No, sir.

6 MR. AUSBORN: Nothing further from this  
7 witness, Your Honor.

8 MRS. PENN: Your Honor, may we approach.

9 (Whereupon a bench conference was held outside  
10 the hearing of the reporter and the jury.)

11 REDIRECT EXAMINATION

12 BY MRS. PENN:

13 Q. You said that it was out of character for Donnie to  
14 run from the police.

15 Has he ever run from the police any time before  
16 that you are aware of?

17 A. No, ma'am.

18 Q. Not that you are aware?

19 A. No, ma'am.

20 Q. Doesn't mean that he hasn't done it; is that right?

21 A. Excuse me?

22 Q. Doesn't mean he hasn't done it; you are just not  
23 aware of it?

24 A. Right.

25 Q. So how can you speak to what's out of character for

1 Mr. Williams?

2 A. Well, as long as we have been friends, you know, I  
3 know Mr. Williams have a criminal record, but he's  
4 a good person.

5 MRS. PENN: That's all.

6 MR. AUSBORN: Nothing further.

7 THE COURT: Thank you. Y'all take a 15-minute  
8 break.

9 (Whereupon a short recess was taken, after  
10 which the jury returned to the courtroom, and  
11 the following proceedings were had in open  
12 court:)

13 LIEUTENANT DURWOOD FREEMAN

14 having first been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MRS. PENN:

17 Q. State your name for the ladies and gentlemen of the  
18 jury.

19 A. Lieutenant Thomas D. Freeman.

20 Q. What's your occupation?

21 A. Police officer for the City of Union Springs.

22 Q. How long have you been acting in that capacity?

23 A. Twenty-two and a half years.

24 Q. Were you acting in that capacity on April 17th,  
25 2004?

1 A. Yes, I was.

2 Q. And do you know Callie Williams?

3 A. Yes, ma'am, I do.

4 Q. Please explain to the ladies and gentlemen of the  
5 jury how you know Callie Williams.

6 A. Ms. Williams, we have had some problems at their  
7 residence with David Donnie Williams. We have gone  
8 down and removed him as early as March, April of  
9 this year, escorted him out of the house.

10 Q. Escorted him out of her house?

11 A. Yes, ma'am.

12 Q. And that's how you know her?

13 A. Yes, I do.

14 Q. And you know David Donnie Williams?

15 A. I sure do.

16 Q. And how do you know David Donnie Williams?

17 A. We have had several occasions to meet according to  
18 our job and I have been knowing him a good many  
19 years.

20 Q. I'm going to ask you specifically about April 17,  
21 2004. Does that date stand out in your mind for  
22 any reason?

23 A. Yes, it does.

24 Q. Where were you on April 17th, 2004?

25 A. I was working from 6:00 a.m. that morning until

1 2:00 p.m. that afternoon.

2 Q. Did you have occasion to come in to contact with  
3 David Donnie Williams?

4 A. Yes, I did.

5 Q. Would you explain to the ladies and gentlemen of  
6 the jury how you came in to contact with David  
7 Donnie Williams?

8 A. Our dispatcher gave us a call to go down to the AG  
9 Grocery.

10 MR. AUSBORN: Your Honor, before he goes into  
11 that, I object to obviously hearsay. He is going  
12 to go into what dispatch --

13 THE COURT: You are objecting to hearsay that  
14 dispatch said. Without going in to what you were  
15 told, tell me what you observed and what happened  
16 when you got there.

17 A. Yes, sir. We were dispatched to AG Grocery. When  
18 I arrived, I observed Mr. Williams and a gentleman  
19 that was in the vehicle with him leaving the south  
20 end of the parking lot. That gave me other  
21 information received that I needed to talk with  
22 Donnie Williams.

23 I turned the police car around, turned the blue  
24 lights on, and at that time, he proceeded to  
25 accelerate.

1 Q. Now, let me ask you this: We've had some testimony  
2 earlier today from other witnesses. Which way were  
3 you coming from when you saw him?

4 A. I came from 29, the south end of MLK Boulevard.

5 Q. You came from the main street and headed straight  
6 down by the old building supply and made a left?

7 A. That's right.

8 Q. And you saw him in the parking lot or had he  
9 already exited the parking lot?

10 A. He was in the parking lot.

11 Q. And where did you turn around?

12 A. I turned around right behind him at about the old  
13 co-op building in the parking lot, the last  
14 building on the left if you enter from the south  
15 end.

16 Q. And where was David when you turned around?

17 A. He was headed south in the parking lot. He was  
18 going towards the trailer park, Jernigan's trailer  
19 park there behind the old Comfort Motel.

20 Q. And I want to clarify whether or not you observed  
21 him speeding before or after you turned your blue  
22 lights on?

23 A. He was leaving the lot about probably 20 miles an  
24 hour. When I turned around, he accelerated.

25 Q. And you, in your testimony, you were travelling and

1           you passed in front of him?

2       A.    We pass -- I passed to my right and he came by me,  
3           and I looked directly into the vehicle at Mr.  
4           Williams.

5       Q.    And once you turned around and turned on your blue  
6           lights, he accelerated?

7       A.    Yes, he did.

8       Q.    And then tell me what happened after he  
9           accelerated?

10      A.    I pursued. I went what we would call a 10-100.  
11           That means I am in pursuit of a vehicle. The  
12           vehicle is not stopping. He got to the stop sign  
13           at the old builder's supply and made a left turn  
14           without stopping at the stop sign. He passed at  
15           least one vehicle, went on down 29 to where the old  
16           green's motel used to be, where Thomas May lives  
17           now. There at the two ponds, he passed another  
18           vehicle, double yellow lines, in a curve, and  
19           proceeded south to County Road 61; made a left turn  
20           on County Road 61. He dead-ended at that next  
21           intersection several miles down the road. When he  
22           made that left turn, we had reached speeds up to  
23           100, 110 miles an hour and lights and siren on the  
24           police car on. He went into a curve and there was  
25           gravel in the curve, the dirt road came up into the

1 road and they had graveled it, and he lost control  
2 of his vehicle and slid backwards into a pine tree.

3 Q. Did he stop?

4 A. He had to stop. He exited the vehicle and fled on  
5 foot.

6 Q. Now, how -- tell me -- I apologize. I wasn't  
7 really listening about how many years you have been  
8 acting as a police officer with the Union Springs  
9 Police Department.

10 A. The exact months?

11 Q. It doesn't have to be exact months?

12 A. Twenty-two and a half years.

13 Q. Twenty-two and a half years?

14 A. Yes, ma'am.

15 Q. Have you been in police chases before?

16 A. Yes, ma'am.

17 Q. When you have been in a police chase before, are  
18 you typically chasing someone who hasn't done  
19 anything?

20 A. No, ma'am. They have done something for me to  
21 pursue them for.

22 Q. And you testified that he reached speeds of up to  
23 110 miles per hour?

24 A. Yes, ma'am.

25 Q. Did you -- when you -- did you see him wreck?



1 A. Yes, ma'am, I was there right after. I wasn't far  
2 behind him. I was very close.

3 Q. And what did he do after he wrecked?

4 A. He exited the car. He stirred up a lot of dust,  
5 but he got out of the car before I could actually  
6 get mine stopped. He got out of the vehicle, went  
7 across the fence and down through a pasture.

8 Q. Did you pursue him on foot?

9 A. No, ma'am.

10 Q. Was there anyone else in the car with him?

11 A. Mr. Blakely.

12 Q. Anthony Blakely?

13 A. Yes, ma'am.

14 Q. Did you observe him when you exited your car?

15 A. Yes, ma'am. He got out. He was pretty well shook  
16 up.

17 Q. He got out of the car?

18 A. Yes, ma'am.

19 Q. Did he at any time let you know that he had been  
20 knocked unconscious?

21 A. I am not sure if he was unconscious or not. It  
22 took a pretty good lick, the vehicle did.

23 Q. He got out of the car and you said he was shook up?

24 A. Yes, ma'am.

25 Q. Did you take him into custody?

1 A. We put him in the car, yes, ma'am. We sat him down  
2 in the police car. I didn't arrest him. He wasn't  
3 the man driving.

4 Q. Okay. And did he make any statements?

5 A. He advised that Donnie fled and he tried to get him  
6 to stop and let him out of the vehicle; he just  
7 wouldn't stop.

8 Q. I introduce State's Exhibit 3 and ask you if that's  
9 the statement he reduced to writing.

10 A. Yes, ma'am.

11 Q. Were you the person that he told what happened?

12 A. He talked with corporal Sharon Dean. I was  
13 standing by until -- Sharon Dean brought him back  
14 to Union Springs, and she took a statement from  
15 him.

16 Q. With you present?

17 A. No, ma'am.

18 Q. Did he ever communicate with you what he was doing  
19 in the car with Donnie Williams?

20 A. He advised.

21 Q. Just if he did?

22 A. He did tell me what he was doing in the car.

23 MR. AUSBORN: Your Honor, I'm going to  
24 interpose an objection here. It is obvious  
25 hearsay.

1 MRS. PENN: Didn't ask what he said.

2 THE COURT: She didn't ask what he said.

3 That's overruled.

4 Q. And did you arrest David Donnie Williams that day?

5 A. No, ma'am.

6 Q. Why not?

7 A. Couldn't find him.

8 Q. How long did it take you to find and arrest him?

9 A. This happened on a Saturday morning, and I rode  
10 through Johnson Street on a Monday morning, and  
11 Donnie was standing in of his mother's house on  
12 Johnson Street. I told him he needed to come on  
13 and get in the car. I needed to issue him some  
14 tickets. We found papers that were on Donnie. So  
15 we held him -- we contacted his parole officer,  
16 probation officer.

17 She advised that she would have some  
18 paperwork, we could hold him; she was going to  
19 revoke his probation.

20 Q. So you arrested him the next Monday?

21 A. Yes, ma'am.

22 Q. What kind of car was Donnie driving?

23 A. A small blue car.

24 Q. Was it a sports car?

25 A. It's a Nissan, something along that line. I didn't

1 bring that information this morning.

2 Q. Was it an older model car or a relatively new model  
3 car?

4 A. It wasn't an old model car, but it wasn't a new. I  
5 would say maybe eight to ten years old.

6 Q. And you were driving a police car?

7 A. Yes, ma'am.

8 Q. Tell me about the engines in those cars?

9 A. The one I was driving runs pretty good.

10 Q. Do you think David Donnie Williams thought he could  
11 outrun you to keep from getting a ticket in that  
12 car he was driving?

13 MR. AUSBORN: I object to his mental operation.

14 THE COURT: Sustained.

15 Q. When you say you had been over to remove David  
16 Donnie Williams from Ms. Callie Williams' house,  
17 would that have been before April 17th or after  
18 April 17th?

19 A. Let me make a notation -- I believe it was in the  
20 second or third month, I believe. I thought I had  
21 written that down in my notes, but it was Ms. Joley  
22 and Nathan Williams went down.

23 There was a trespass paper issued that he  
24 should not go back to Ms. Williams' residence.

25 We went down and told Donnie, all three of us,

1           verbally, not to go back to the residence.     And I  
2           am not sure which officer, they didn't put it on  
3           the trespass paper.   He was given a copy of the  
4           trespass notice later.

5       Q.   But you did verbally tell him not to go back?

6       A.   Yes, ma'am.

7       Q.   And at that time you removed him?

8       A.   We were there until he left the premises, yes,  
9           ma'am.

10      Q.   And that would have been in close proximity to what  
11           occurred on April 17th?

12      A.   Prior to that date, yes, ma'am.

13      Q.   Who ultimately arrested David Donnie Williams?

14      A.   I picked him up on that morning, early that morning  
15           on the 19th of April.

16      Q.   Did you arrest him at Ms. Callie Williams' house?

17      A.   No, ma'am, on Johnson Street.

18      Q.   Does Mrs. Johnson stay on Johnson Street?

19      A.   No, ma'am, she doesn't.

20      Q.   What was he doing when you arrested him?

21      A.   He was just standing there next to a car.

22      Q.   So he wasn't in bed when you arrested him?

23      A.   No, ma'am.

24      Q.   Have you taken statements from Ms. Callie Williams?

25      A.   Corporal Dean took statements from her on the same

1 day we had the speed chase with him.

2 Q. Did you have a chance to talk to her?

3 A. Not that morning.

4 Q. Have you ever had a chance to observe her after  
5 having been called down to the house with some  
6 domestic violence with her and David Donnie  
7 Williams?

8 A. We have seen her a time or two but not to actually  
9 have a conversation.

10 Q. Okay. When you stayed there until Donnie Williams  
11 left that day, did you see Ms. Callie Williams  
12 there?

13 A. She was in the residence, I believe. I didn't go  
14 in, but I stood on the steps outside. The children  
15 were there.

16 Q. And when was the first time you talked to me about  
17 this case?

18 A. I think I talked to you yesterday morning.

19 I'm not sure about any of the others, but  
20 probably on a previous occasion. We've had a lot  
21 going on.

22 Q. Have I ever suggested to you what to say when you  
23 got on the stand?

24 A. No, ma'am.

25 Q. Have you ever had to arrest Ms. Callie Williams for

1 anything?

2 A. Not to my knowledge.

3 Q. Is it your understanding that she was at fault in  
4 anything that occurred on April 17th, 2004?

5 A. No, ma'am.

6 Q. Whenever you've had to go over to her residence to  
7 remove Donnie Williams, was there ever any  
8 indication that Ms. Callie Williams was at fault?

9 A. No, ma'am.

10 Q. Nobody ever told you that she did anything to him,  
11 did they?

12 A. No, ma'am.

13 Q. Tell me what the purpose of a trespass paper that  
14 was issued -- what's the purpose of that piece of  
15 paper?

16 A. That's to keep anyone from going back to a  
17 residence or to keep them away from a residence.

18 Q. Are you familiar with a PFA?

19 A. Repeat the question.

20 Q. Protection from abuse?

21 A. I understand that there are papers that are served  
22 or issued to keep people from being harassed or  
23 abused by others, yes, ma'am.

24 Q. And you kind of said the same thing. I want to  
25 know if they are basically the same thing.

1 A. Trespass, the way I understand it, is issued by the  
2 circuit clerk, which we deal with more than we do  
3 anything else. We have judges to sign orders to  
4 keep people away. This is basically served by the  
5 circuit clerk.

6 Q. But their purpose is the same?

7 A. Yes, ma'am.

8 Q. Have you ever told Ms. Williams to go up and file  
9 for a protection from abuse?

10 A. I don't think I ever mentioned that to her.

11 Q. Okay. And whether or not there was a PPFA or  
12 trespass notice, both of them mean the same thing,  
13 they are both pieces of paper, aren't they?

14 A. Yes, ma'am.

15 Q. They don't physically stop anyone from doing  
16 anything, do they?

17 A. Not physically, no, ma'am.

18 Q. Have you ever had to escort any of Ms. Williams'  
19 children?

20 A. No, ma'am.

21 Q. I know you said you had dealings in the past with  
22 Donnie. I don't want to know what they are. But I  
23 want to know if there is any reason why you would  
24 have a bone to pick with Donnie or be out to get  
25 him?



1 A. Not just out to get him, no, ma'am.

2 Q. He hadn't done anything to you and you told him,  
3 I'm coming to get you Donnie?

4 A. No, ma'am.

5 Q. I haven't told you anything like, We are going to  
6 get Donnie Williams, have I?

7 A. No, ma'am.

8 Q. You have been in court with me on a number of  
9 occasions, haven't you?

10 A. Yes, ma'am.

11 Q. Have I ever said anything like that?

12 A. No, ma'am, not to my knowledge, no.

13 MRS. PENN: Those are all of the questions I  
14 have at this time. Thank you.

15 CROSS EXAMINATION

16 BY MR. AUSBORN:

17 Q. Mr. Freeman, I'm Keith Ausborn, and if ask you a  
18 question you don't understand, bring it to my  
19 attention and I'll be glad to clarify that.

20 I represent Donnie Williams. Have you and I  
21 ever met before, that you recall?

22 A. No, sir, not that I recall.

23 Q. Now, have you seen the indictments, the two  
24 indictments in this case? Has anybody showed you  
25 the two indictments in the case?

1 A. No, sir.

2 Q. Has the State of Alabama informed you of the fact  
3 that Mr. Donnie Williams has been indicted on two  
4 separate charges?

5 A. I have not seen any indictments on that.

6 Q. Do you know what he is charged with, by the way?

7 A. Only that I am here to testify on what I had to  
8 deal with on the 17th.

9 Q. Now, and the 17th, let's talk about that.

10 The 17th, I want to take you back to the 17th.  
11 You testified previously -- of course, you knew Mr.  
12 Donnie Williams; is that right?

13 A. Yes, sir.

14 Q. Y'all had worked together; is that correct?

15 A. We worked together, yes, sir.

16 Q. Now, where was that, by the way?

17 A. Johnson's Foodland, a grocery store.

18 Q. Okay. April 17th, 2004, the State of Alabama has  
19 accused my client, Mr. David Donnie Williams, for  
20 stalking Callie Williams on April 17, 2004.

21 You didn't see that, did you? Am I right about  
22 that?

23 A. I didn't see that, no, sir.

24 Q. The State of Alabama has accused my client, Mr.  
25 David Donnie Williams, for harassment, i.e.,

1 domestic violence against Callie Williams on March  
2 30th. You didn't see that either; am I correct?

3 A. I didn't see it, no, sir.

4 Q. You have been in law enforcement for about  
5 twenty-nine years; is that correct?

6 A. Twenty-two and a half.

7 Q. And in that capacity, would you agree, you have  
8 seen a lot of strange stuff come up in law  
9 enforcement?

10 A. Yes, sir.

11 Q. One of those phenomenons that come up in law  
12 enforcement is that people sometimes, many times,  
13 will unfairly use and exploit the system, the  
14 criminal justice system for their own personal  
15 gain. You have seen that?

16 A. Yes, sir, I have seen some things.

17 Q. And one example of that is if I have got a beef --  
18 if a person has a beef -- Party A has a beef with  
19 Party B, one way in which they may use to exploit  
20 the system is to allege and file false charges  
21 against that person in order to vendetta against  
22 that person, and they use the system as the  
23 leveraging tool. You have seen that happen, have  
24 you not?

25 A. I have seen the system misused, yes, sir.

1 Q. And in this case, you don't know whether or not  
2 that happened in this case? It is just possible  
3 that's what happened and that's what's happening in  
4 this case? Am I correct about that?

5 A. I can't say that it's happened in this case.

6 Q. But it could be? Because, again, as you testified  
7 to, I didn't see Mr. David Donnie Williams harass  
8 her, domestic violence against her on March 30th?

9 You admit that?

10 A. I didn't see it.

11 Q. I didn't see Mr. David Donnie Williams stalk her on  
12 April 17th, 2004; you admit that?

13 A. I didn't see it.

14 Q. So as far as you know, it is possible she could  
15 have made up these allegations, that's possible;  
16 isn't that correct?

17 A. It's possible.

18 Q. And you would agree that the image many times that  
19 a person portrays in public, many times is  
20 significantly different than the private image; am  
21 I right?

22 MRS. PENN: I object, Your Honor.

23 MR. AUSBORN: I didn't ask that question.

24 THE COURT: Let's hear the question again.

25 Whose public image? That might help.

1 Q. In this case, you knew Mrs. Callie Williams; is  
2 that correct?

3 A. Yes, sir.

4 Q. Openly, it was rumored --

5 MRS. PENN: I object, Your Honor.

6 MR. AUSBORN: Okay. Okay. I can get around  
7 it.

8 Q. Now, April 17th, you got a call from dispatch; is  
9 that correct?

10 A. (Witness nods affirmatively.)

11 Q. And you were dispatched to AG's Grocery; is that  
12 correct?

13 A. Yes, sir.

14 Q. And were you dispatched to AG's Grocery as a result  
15 of Ms. Callie Williams?

16 A. I received a call that Ms. Callie Williams called  
17 -- that Ms. Callie had called.

18 Q. She apparently had called in to the police?

19 A. Yes, sir, that's what we were advised.

20 Q. Now, April 17th, help us out, if you will, you  
21 didn't have an arrest warrant for Donnie Williams  
22 on April 17th; is that correct?

23 A. That's correct.

24 Q. So Mr. Donnie Williams wasn't running from the law  
25 because he had an arrest warrant and he knew you

1 had an arrest warrant for him, because that's  
2 impossible; is that correct?

3 A. I didn't know about a warrant until later.

4 Q. Now, the question has come up in my mind and the  
5 question has come up in the jury's mind as to why  
6 he ran, why he took off. Let's see if you can help  
7 us with that.

8 David Donnie Williams previously in the past --

9 MRS. PENN: I don't want you to testify. I  
10 just want you to ask a question. That's my  
11 objection.

12 MR. AUSBORN: Okay.

13 Q. Have you ever made a traffic stop on David Donnie  
14 Williams in the past for improper equipment,  
15 improper tag, or anything like that?

16 A. Yes, sir. I have written him several tickets.

17 Q. And, furthermore, one or more other tickets you  
18 might have written on him, correct me if I am  
19 wrong, is driving while suspended or revoked?

20 A. That's correct.

21 Q. In your experience in law enforcement, twenty-two  
22 years seniority here, have you seen instances in  
23 which a person continues to drive without a license  
24 and then when they see the police, they take off  
25 because they don't want to be stopped again and

1           arrested for driving while revoked?

2       A.     Yes.

3       Q.     You have seen that happen?

4       A.     Yes, sir.

5       Q.     In this case, is it not possible that when he saw  
6           you and knew it was you and knew you had stopped  
7           him before for driving while revoked, arrestable  
8           offense, he took off, that's possible?

9       A.     It's possible.

10      Q.     And that, of course, would give rise and  
11           explanation in terms of why he took off, reasonable  
12           explanation; isn't that correct?

13      A.     Could be, yes, sir.

14      Q.     Now, let's talk about the trespass notice.

15            You didn't serve that on Donnie Williams; is  
16           that not right?

17      A.     I didn't serve the paper on him, no, sir.

18      Q.     And you would agree that you didn't issue that --  
19           to the best of your knowledge and information, you  
20           understand that Mr. Jernigan issued that trespass  
21           notice and issued it to the Union Springs Police  
22           Department to be served; is that correct?

23      A.     Yes.

24      Q.     And as you correctly stated, you never served it;  
25           is that correct?

1 A. I didn't serve it.

2 Q. You would agree that since you were not there on  
3 the date in which it is alleged and reputed that it  
4 was served, you cannot confirm that it was, in  
5 fact, served; you agree with that?

6 A. Yes, sir.

7 Q. Wouldn't you further agree that if it is not  
8 served, he is not put on notice, because his  
9 ability to be noticed of it is directly attributed  
10 to it being properly served? You agree with that?

11 A. No, sir. I gave him verbal notice.

12 Q. Let's talk about that.

13 When you gave him verbal notice, you didn't  
14 have it in your hand?

15 A. That's correct.

16 Q. And you obviously couldn't break it out and say,  
17 okay, I've got a trespass notice signed by Mr.  
18 Wilbert Jernigan saying you are enjoined from  
19 having any further contact at such and such address  
20 with Ms. Callie Williams; is that correct?

21 A. We didn't serve the paper.

22 Q. Now, there is a difference, a major difference,  
23 between a trespass notice and an injunction issued  
24 by this court; namely an ex parte order granting  
25 protection from abuse. They are like night and



1 day; you would agree with that?

2 A. They are both paper, but there is differences, yes,  
3 sir.

4 Q. One of the differences is that a trespass notice is  
5 not sanctionable by this court if it is violated,  
6 but an ex parte --

7 MRS. PENN: I object, Your Honor. He is  
8 testifying. He can ask a question of whether or  
9 not he knows.

10 THE COURT: Ask a question.

11 Q. Are you aware that a trespass notice is not  
12 sanctionable by this court if it is violated, but,  
13 yet, an ex parte order, if it is violated, it is  
14 sanctionable by this court?

15 A. Yes, sir.

16 Q. And to the best of your recollection, no  
17 application was sought by Ms. Callie Williams for a  
18 petition for an order of protection from abuse; is  
19 that correct?

20 A. Not to my knowledge.

21 Q. Did you tell her that this was a remedy, a relief  
22 that she was entitled to?

23 A. I have had very little communication with her about  
24 it. I don't remember me having told her anything  
25 about it.

1 Q. And to the best of your knowledge, information and  
2 belief, she didn't seek that remedy, did she?

3 A. I don't know what she did as far as that's  
4 concerned, no, sir. I don't have knowledge of  
5 that.

6 Q. Now, in your experiences, twenty-two years, you  
7 have seen instances in which a person says, I don't  
8 want to have anymore contact with that person?  
9 That's what they represent to law enforcement, but,  
10 yet, on the other hand, secretly and privately,  
11 they continue to engage contact with that person?  
12 You have seen that?

13 A. Yes, sir.

14 Q. And it is possible that in this case that's exactly  
15 what was happening; she could have still be having  
16 contact with him? That's possible?

17 A. Yes, sir, it's possible.

18 Q. And if she's having contact with him, okay, that's  
19 not a violation by him of any notice because she's  
20 engaging him; wouldn't you agree with that?

21 A. Yes, sir.

22 Q. Now, April the 19th, when you finally caught up  
23 with Mr. Williams, he wasn't in his car at that  
24 time, was he?

25 A. No, sir.

1 Q. And on that date, you spoke with him and you did  
2 ascertain that he was driving the car on April  
3 17th; is that correct?

4 A. Yes, sir, he admitted it.

5 Q. And Donnie candidly admitted that. And did you  
6 give him two tickets at that time?

7 A. Yes, I did.

8 Q. And one ticket you gave him, was it driving while  
9 revoked or suspended?

10 A. I gave him two tickets: One was for attempting to  
11 elude and one was for reckless driving.

12 Q. And to the best of your knowledge or information,  
13 he didn't have a current driver's license; is that  
14 correct?

15 A. I didn't run a current check on him. I had the  
16 other basic information. I did not write him a  
17 ticket for that.

18 Q. And you would agree that was one such ticket you  
19 could have written; is that correct?

20 A. I could have.

21 Q. In fact, even on April 17th, just him being behind  
22 the wheel of a car?

23 MRS. PENN: I object, Your Honor. Assuming  
24 facts not in evidence.

25 MR. AUSBORN: That's in evidence. We stipulate

1           that he was driving the vehicle.

2           THE COURT: Could you have written him a ticket  
3           for driving while revoked?

4           THE WITNESS: Yes, sir.

5           THE COURT: Next question.

6   Q.   Now, you obviously are not here to color or slant  
7       your testimony in favor of the State, or for that  
8       matter, in favor of the defense; is that correct?

9   A.   I'm here to tell the truth.

10  Q.   Tell the truth.

11           And in summation, if we cook your testimony  
12       down to two precepts, they would be, one, I cannot  
13       say that Donnie Williams stalked Ms. Callie  
14       Williams on April 17th. That's Point Number 1.

15           You agree with that?

16  A.   I didn't see him.

17  Q.   And you didn't see him stalk her on April 17th,  
18       2004, nor did you hear him stalking her on April  
19       17, 2004; isn't that true?

20  A.   That's true.

21  Q.   And precept Number 2, March 30, 2004, I did not see  
22       Mr. David Donnie Williams harass, i.e., commit  
23       domestic violence against the person of Ms. Callie  
24       Williams; that's also correct?

25  A.   I didn't see it.

1 Q. And, likewise, you didn't hear that; isn't that  
2 correct?

3 A. That's right.

4 MR. AUSBORN: Nothing further for this witness,  
5 Your Honor.

6 THE COURT: Redirect.

7 REDIRECT EXAMINATION

8 BY MR. PENN:

9 Q. Do you think Callie Williams exploited the system  
10 when she filed these charges against Donnie  
11 Williams? Do you have any reason to believe that?

12 MR. AUSBORN: I don't know if he can accurately  
13 answer that question.

14 He can only testify to what is in his --

15 THE COURT: I think you laid the foundation  
16 when you asked the question about had the system  
17 been exploited.

18 Q. Do you believe that in this situation Callie  
19 Williams exploited the system?

20 A. I don't think so. My personal opinion, no.

21 Q. In your opinion as a police officer, do you have  
22 any reason to believe that Callie Williams  
23 exploited the system?

24 MR. AUSBORN: I think this is objectionable  
25 also. He's not an expert, so I don't believe he is

1 qualified.

2 THE COURT: It's been asked and answered..

3 Next question.

4 Q. I think you were asked if this court could sanction  
5 the violation of a trespass notice and you said no;  
6 is that correct?

7 A. The way that I probably perceive that would be the  
8 trespass would be, no, it would be up to the  
9 officers to press the charges to do something  
10 different.

11 Q. So, in fact, if you were to go out and tell someone  
12 that they have trespassed from being in places that  
13 is just as effective as serving a piece of paper?

14 A. Yes, ma'am.

15 Q. And after you have told that person that, if they  
16 are in a place that you have told them they have no  
17 business being, when you go out there, can you  
18 arrest them?

19 A. Yes, ma'am.

20 Q. And who will hear that case?

21 A. Our judges.

22 Q. In this court; is that correct?

23 A. That's correct.

24 Q. So a trespass notice, verbally or written, is  
25 sanctionable by this court; is that correct?

1 A. Yes, ma'am, it is.

2 Q. Whether or not Callie Williams had him back at her  
3 house -- and I'm not saying that she did -- after  
4 she had him trespassed, but whether or not she  
5 said, Donnie, come back over here, it is not your  
6 testimony that he's not in violation of the  
7 trespass if he comes over there?

8 A. If he goes back over there after being told not to,  
9 he's in violation.

10 MRS. PENN: Those are all of the questions I  
11 have.

12 RECROSS EXAMINATION

13 BY MR. AUSBORN:

14 Q. Officer Freeman, you were asked the question about  
15 in terms of trespass notice, whether or not it is  
16 violated, if it is sanctionable by the court.

17 To the best of your knowledge, has Mr. David  
18 Donnie Williams ever been charged with trespassing  
19 in violation of that notice of trespass?

20 A. I don't remember if there has been a criminal  
21 trespass charge on him or not. I don't remember.

22 Q. And I think the record will reflect that he is not  
23 on trial for trespassing, and you have no  
24 information that would dispute that fact?

25 A. I don't have anything that I know of right now, no,

1 sir.

2 MR. AUSBORN: Okay. No further questions.

3 MRS. PENN: I don't have anything else for this  
4 witness.

5 THE COURT: Thank you, Lieutenant. Next  
6 witness.

7 MRS. PENN: The state calls Lakeisha Williams.

8 LAKEISHA WILLIAMS

9 having first been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MRS. PENN:

12 Q. Good morning. How are you?

13 A. Good morning.

14 Q. Tell the ladies and gentlemen of the jury your  
15 name, please.

16 A. Lakeisha Williams.

17 Q. Are you related at all to Ms. Callie Williams?

18 A. Yes, that's my mother.

19 Q. That's your mother?

20 A. Yes.

21 Q. How old are you?

22 A. Twenty-one.

23 Q. How do you know Donnie?

24 A. I remember when he used to date my mom.

25 Q. He used to date your mother?



1 A. Yes.

2 Q. Tell me about the relationship between your mother  
3 and David Donnie Williams.

4 A. At the time while they was going together -- at  
5 first, it started off well, but I guess it started  
6 getting all confused and then he started fighting  
7 her and just --

8 Q. When you say he was fighting her, would there be  
9 instances where you actually witnessed that?

10 I am not talking about anything your mama told  
11 you.

12 A. Yes.

13 Q. You actually witnessed the fighting?

14 A. Yes.

15 Q. Before I let you go on, let me clear this up before  
16 I forget. I talked to you, didn't I?

17 A. Yeah.

18 Q. I have talked to you about this case, haven't I?

19 A. Yes.

20 Q. And tell the ladies and gentlemen of the jury how  
21 many times I talked to you.

22 A. You talked to me and you told me to tell the truth.

23 Q. I want to know how many times I talked to you,  
24 though.

25 A. One time.

1 Q. And when was that?

2 A. It was yesterday.

3 Q. I didn't even talk to you this morning when you  
4 came in, did I?

5 A. No.

6 Q. Were you in there yesterday when I talked to your  
7 sister and your brother?

8 A. No.

9 Q. In my office yesterday morning when I talked to  
10 your sister and brother?

11 A. No.

12 Q. Do you recall when I -- what time did you come to  
13 my office yesterday morning?

14 A. Around 7:30.

15 Q. Who came with you?

16 A. Myself, my mom.

17 Q. And who else?

18 A. And my sister and my brother.

19 Q. All of y'all came together; right?

20 A. Yeah.

21 Q. Is there any time that I took Quadarius or Narkesha  
22 out of the room where we were all sitting?

23 A. Yes.

24 Q. I took them out of the room?

25 A. Yes.

1 Q. Where did I take them to?

2 A. You took them outside to sit on the bench outside.

3 Q. And did I talk to your mom at that point?

4 A. You talked to her before me.

5 Q. I talked to her before you?

6 A. Yes.

7 Q. Did you hear me say anything to your sister and  
8 brother?

9 A. No.

10 Q. Have they ever told you that I told them to say  
11 something that wasn't true?

12 A. No.

13 Q. When I talked to you about this case, did I tell  
14 you what to say?

15 A. No.

16 Q. Tell the ladies and gentlemen of the jury what I  
17 said to you when I talked to you.

18 A. Well, she told me to tell the truth and that was it  
19 and tell what I know.

20 Q. Tell what you know.

21 And when I said, tell what you know, I said I  
22 want to know what you saw and what you heard; is  
23 that correct?

24 A. Yes.

25 Q. And I didn't want to know anything that anybody

1 told you, did I?

2 A. Right.

3 Q. And you said that you were present when David  
4 Donnie Williams and your mother had fights?

5 A. Yes.

6 Q. Can you tell me any recent events? You know what  
7 we are here about, don't you?

8 A. Yes.

9 Q. We are here about complaints that your mom made on  
10 March 25th, the 30th, and April 17th.

11 Do you remember those dates?

12 A. Yes.

13 Q. Was your mother living with you during that time?

14 A. Yes.

15 Q. And were you a witness to any of the events that  
16 occurred during that time span?

17 A. Yes, except for the 17th of April.

18 Q. You were not there on the 17th, were you?

19 A. No.

20 Q. And you don't know what happened on the 17th, do  
21 you?

22 A. No.

23 Q. And you can't testify to that, can you?

24 A. No.

25 Q. Tell me what date that I mentioned that you can

1 testify to.

2 A. March 25th and March 30th.

3 Q. Tell the ladies and gentlemen of the jury what  
4 happened on March 25th.

5 A. On March 25th, I went to pick up my mom from work,  
6 and he was standing out there -- David was standing  
7 out there at the guard shack. I guess he was  
8 waiting on her to come out.

9 And when I pulled up, she was afraid to come to  
10 the car because she thought he was going to jump on  
11 her or whatever, and somebody pulled him away or  
12 whatever, and she got in the car. And after we  
13 pulled off, then he followed us around town. So we  
14 went to the police station about that.

15 Q. Okay. And your mom made a report that night,  
16 didn't she?

17 A. Yes.

18 Q. And I'm going to show you what's been marked  
19 Defendant's Exhibit 1.

20 There is a date in the top left-hand corner if  
21 you are facing it. What's the date on that report,  
22 top left corner?

23 A. March 25th.

24 Q. And what time is next to that?

25 A. 1:00 -- 1:15.

1 Q. A.m. or p.m.?

2 A. A.m.

3 Q. So that's 1:15 in the morning; is that correct?

4 A. Yes.

5 Q. How long was he following you after you picked your  
6 mom up from work?

7 A. He followed us for about ten minutes because we  
8 were trying to get away from him.

9 Q. And then you went up to the police station?

10 A. Yes.

11 Q. Tell the ladies and gentlemen of the jury if that  
12 was a regular occurrence.

13 A. Yes, it was, daily.

14 Q. I'm sorry?

15 A. It was daily.

16 Q. I didn't understand what you said.

17 A. It was daily. He followed us on a regular basis.

18 Q. It was daily.

19 What would be some of the places he would  
20 follow you from or to?

21 A. He would follow me in the morning time when I would  
22 take my son to school, and he would follow me in  
23 the evening time when she would pick her children  
24 up. And one night he followed me down Sardis Road,  
25 past Sardis, trying to run me off the road.

1 Q. Tell me about that date. Do you remember the date?

2 A. No, I don't remember the date, but I remember when  
3 it happened.

4 Q. Was it after March 25th?

5 A. I don't remember.

6 Q. And was he just following you? Tell me how fast  
7 you were going.

8 A. I went up to almost 100 miles an hour trying to get  
9 away. He got on the left side of the road, trying  
10 to push me off the road. And so I kept going until  
11 I decided that I was going to try to slow down, and  
12 he was going to keep going. So I turned around in  
13 the road. And after I turned around, he got back  
14 on the left side of the road. And all of a sudden,  
15 he had a blow out.

16 Q. So he is traveling beside you?

17 A. Yes.

18 Q. And you are speeding, trying to get away from him?

19 A. Yes.

20 Q. And he is in the wrong lane?

21 A. Yes.

22 Q. And tell us how you turned around in the road.

23 A. I just turned around in the middle of the road.

24 Q. You pulled over and you turned around in the middle  
25 of the road?

1 A. Yes.

2 Q. And were you heading back towards town at that  
3 time?

4 A. Yes.

5 Q. And did he turn around to follow you?

6 A. Yes.

7 Q. And did I understand your testimony to be, that  
8 once you were heading back to town, he proceeded to  
9 get on the wrong side of the road again?

10 A. Yes.

11 Q. And how long did that last?

12 A. It lasted for about fifteen minutes.

13 Q. About fifteen minutes from start to finish?

14 A. Uh-huh (affirmative response).

15 Q. And he had a blow out?

16 A. Yes.

17 Q. And did you go to the police at that point?

18 A. Yes.

19 Q. You did?

20 A. Uh-huh (affirmative response).

21 Q. Did anybody go with you?

22 A. Nobody but my son.

23 Q. Did you fill out a complaint and warrant?

24 A. Yes.

25 Q. Has that been heard in court yet?



1 A. No.

2 Q. I know about that time. And you also said he used  
3 to follow you on a daily basis, and I know you told  
4 me he would follow you to take your son to school  
5 and he would follow your mother in the afternoons  
6 when she picked up the kids.

7 Is there any other time he would follow?

8 A. If he would see her in the street anywhere, he  
9 would get behind her and start following her; even  
10 me.

11 Q. Did your mother have a vehicle?

12 A. No, she was using my car.

13 Q. Would there be times that you were in the car with  
14 her when he was following?

15 A. No.

16 Q. She was by herself?

17 A. Yes.

18 Q. Tell me about what you know and when you were in  
19 the car with her, okay.

20 A. Okay.

21 Q. Has there ever been a time that he followed her  
22 when you were in the car?

23 A. No.

24 Q. But he has followed you?

25 A. Yes.

1 Q. And you love your mother, don't you?

2 A. Yes.

3 Q. And you would do whatever it is to help her; is  
4 that correct?

5 A. Yes.

6 Q. Does that include lying in here today?

7 A. No.

8 Q. Are you here lying for your mother?

9 A. No.

10 Q. Can you look these ladies and gentlemen of the jury  
11 in the eye and tell them that you are telling the  
12 truth? Can you do that?

13 A. Yes.

14 Q. Tell me -- you said there were other instances  
15 where you saw them fighting?

16 A. Yes.

17 Q. Can you tell me about any of those instances?

18 A. Well, he used to fight her after she get off work,  
19 accusing her of things that didn't happen, accusing  
20 her of men, going places she didn't go and stuff.

21 Q. And that would be after she got off work?

22 A. Uh-huh (affirmative response).

23 Q. And that would have been the same shift she was  
24 working on March 21st?

25 A. Yes.

1 Q. When you say fight her, did he physically touch  
2 her?

3 A. Yes.

4 Q. Did you see that?

5 A. Yes, plenty of times I seen it.

6 Q. Did you hear what was going on?

7 A. Yeah.

8 Q. Did you ever hear him threatening her?

9 A. Yes, all the time.

10 Q. Tell me about the threats.

11 A. Well, he be telling her, I'll kill you and I'll do  
12 this and that, and I'll kill myself after I kill  
13 you, and I'll kill your whole family.

14 Q. Was there any times that you can recall that David  
15 Donnie Williams said Callie, I don't want you?

16 A. No.

17 Q. Do you need to take a little break?

18 A. (Witness shakes head.)

19 Q. So he never told your mother that he didn't want  
20 her?

21 A. No. She told him that she didn't want him anymore.

22 Q. Has there ever been a time that your mother had to  
23 leave her house?

24 A. Yes.

25 Q. Where did she go?

1 A. My house.

2 Q. And how long did she stay with you?

3 A. Until they locked him up.

4 Q. Until they locked him up?

5 A. (Witness nods affirmatively.)

6 Q. Was she afraid?

7 A. Yes.

8 Q. What was she afraid of?

9 A. He was talking about he was going to kill her and  
10 stuff.

11 Q. And she was afraid of him, wasn't she?

12 A. Yes.

13 Q. And she stayed at your house?

14 A. Yes.

15 Q. Did Donnie Williams ever come to your house?

16 A. Yeah, he would knock on my windows and stuff and  
17 knock on my door real loud, and I had neighbors and  
18 stuff. Sometimes it was real early in the morning.

19 Q. I want to take you specifically to April 17th.

20 Do you remember that date?

21 A. No, I don't remember that date.

22 Q. Let me ask you specifically when you were with your  
23 mom and you went to pick your sister up.

24 Do you remember that?

25 A. Yes.

1 Q. Was there ever a time you went to pick your sister  
2 up and she wasn't there?

3 A. Sometimes I would go pick her up.

4 Q. Was there ever a time when you went with your  
5 mother to pick up Narkesha getting off the bus and  
6 she wasn't there?

7 A. Yeah, it was one time.

8 Q. And who was with you that time?

9 A. My mom.

10 Q. Was anybody else with you?

11 A. No, nobody but my son.

12 Q. How old is your son?

13 A. Five.

14 Q. When you got to the house and she wasn't there, did  
15 either of you get out of the car?

16 A. No. We locked the doors.

17 Q. Did you leave?

18 A. No.

19 Q. About how long did you sit and wait before you saw  
20 Narkesha?

21 A. About two or three minutes.

22 Q. And when you saw her, where did you see her?

23 A. Well, at first we seen him across the railroad. We  
24 saw him coming from over there.

25 Q. Did you know Narkesha was in the car?

1 A. Yeah, because we seen her in the backseat.

2 Q. And did he come straight over to where your mom  
3 lived?

4 A. Yeah.

5 Q. Where did he park?

6 A. Beside the road.

7 Q. Parked beside the road.

8 And I think there has been some testimony that  
9 your mom was in that very first trailer beside the  
10 roadway; is that correct?

11 A. Yes.

12 Q. Did David Donnie Williams get out of the car?

13 A. Yes.

14 Q. Did your sister get out of the car?

15 A. Yeah, she got out.

16 Q. Did she proceed to go and get in the car?

17 A. He had her by the hand. She couldn't get in the  
18 car.

19 Q. Was there anything that David Donnie Williams said  
20 that day that you recall?

21 A. Yeah, he was threatening her about her trespassing  
22 him away from her properties, talking about I'll  
23 kill you and all.

24 Q. So he called her a bad name and told her he would  
25 kill her?

1 A. Yes.

2 Q. Was there anything else that David Donnie Williams  
3 said that day?

4 A. No.

5 Q. Who opened the door?

6 A. My son opened the back door by mistake.

7 Q. Your son opened the back door?

8 A. Yes.

9 Q. Did Narkesha get in the car at that time?

10 A. Well, he had her by the hand, and he grabbed my mom  
11 through the back door, pulling on her shirt and  
12 stuff.

13 Q. Grabbed your mom, pulling on her shirt through the  
14 back door?

15 A. (Witness nods affirmatively.)

16 Q. And was the window down?

17 A. No.

18 Q. And she had her door locked?

19 A. Yes.

20 Q. Was she saying anything when he was pulling on her  
21 shirt?

22 A. That's when she was saying he was trespassing on  
23 the property and calling her names and stuff.

24 Q. That's when he was threatening her because she had  
25 trespassed away from the property.

1                   And that's something you heard him say?

2       A.     Yes.

3       Q.     And you were driving the car that day?

4       A.     Yes.

5       Q.     Was he able to pull your mother out of the car?

6       A.     No, he couldn't pull her out.

7       Q.     What happened after he wasn't able to pull her out?

8       A.     He just went ahead and let my sister get in the  
9             car.

10      Q.     And did you leave at that point?

11      A.     Yes.   And when I was trying to leave out the yard,  
12             he pulled in front of me so I couldn't leave out  
13             the yard.   I had to go around him.

14      Q.     Was he still on the roadway?

15      A.     Yeah.

16      Q.     Pulled across and blocked the driveway.

17             Was there ever a time when he was out of the  
18             car that he walked up into your mother's yard?

19      A.     That's when he walked up in the yard when my sister  
20             went to get in the car, and he pulled her by the  
21             hand.

22      Q.     And we are talking about April 17th; is that  
23             correct??   You told me you didn't know what day it  
24             was, but you remember the incident; is that  
25             correct?



1 A. Yes, uh-huh (affirmative response).

2 Q. Let me ask you this: Can you count for me about  
3 how many times David Donnie Williams followed you?

4 A. It was every day.

5 Q. On a daily basis?

6 A. Yes.

7 Q. There has been some testimony in court about some  
8 charges that were filed in 2001.

9 Are you familiar with those charges?

10 A. Yes.

11 Q. Who was the victim in those charges?

12 A. Me and my mom.

13 Q. Did you sign a complaint and warrant against Donnie  
14 Williams?

15 A. Yes.

16 Q. Why?

17 A. Because he had stolen property of mine and he  
18 fought me.

19 Q. He fought you?

20 A. Yes.

21 Q. Where did he fight you?

22 A. In my mom's house.

23 Q. Were those charges false?

24 A. No.

25 Q. When you filed them, did you just make that up?

1 A. No.

2 Q. And I think you said your mom was the victim.

3 Did you see him do anything to her?

4 A. Yeah, he was at her at the time and that's when I  
5 jumped in the situation, because I didn't want him  
6 hitting on my mom.

7 Q. So you jumped in to help your mom?

8 A. Yes.

9 Q. And he fought you, too, didn't he?

10 A. Yes.

11 Q. And those weren't false charges, were they?

12 A. No.

13 Q. Have you told me all of the things that you  
14 witnessed between David Donnie Williams and Callie  
15 Williams between March 25th, March 30th and April  
16 17th?

17 A. Say what now?

18 Q. Have you told me all you know about what happened  
19 between March 25th, March 30th and April 17th?

20 A. Yes.

21 MS. PENN: Those are all of the questions I  
22 have.

23 THE COURT: Cross.

24 CROSS-EXAMINATION

25 BY MR. AUSBORN:

1 Q. Ms. Williams, I am Keith Ausborn, and, of course, I  
2 represent David Donnie Williams.

3 If I ask you a question and you don't  
4 understand it, bring it to my attention and I'll  
5 clear it up for you.

6 Have you ever heard of the phrase, if you tell  
7 one lie, you got to tell two more to cover it up?

8 Have you ever heard of something like that?

9 A. Yes.

10 Q. Now, you love your mother?

11 A. Yes.

12 Q. You hate Donnie Williams?

13 A. I don't hate him.

14 Q. Now, your brother, Quadarius, I call him, do you  
15 consider him being an honest individual?

16 A. Yes.

17 Q. Your sister -- is it Narkeisha?

18 A. Yes.

19 Q. Do you consider her as being honest?

20 A. Yes.

21 Q. Now, your mother has always had physical custody of  
22 your two smaller siblings; is that right?

23 A. Yes.

24 Q. They have always stayed up under your mother's  
25 roof; is that right?

1 A. Yes.

2 Q. Now, David Donnie Williams, is it your contention  
3 that he is a violent man?

4 A. Yes.

5 Q. Is that your contention?

6 A. (Witness nods affirmatively.)

7 Q. Is it your contention that he has a pattern of  
8 physically abusing your mother?

9 A. Yes.

10 Q. Is it also your contention that he has a pattern of  
11 physically abusing you?

12 A. Yes.

13 Q. Is it also your contention that he has a pattern of  
14 abusing your younger brother?

15 A. Yes.

16 Q. And abusing your younger sister?

17 A. Yes.

18 Q. Is that your contention?

19 A. Yes.

20 Q. Now, you admitted your younger brother is honest?

21 A. Yes.

22 Q. And you don't know of any reason he would come in  
23 to court under oath and lie; do you agree with  
24 that?

25 A. Yes.

1 Q. Am I right?

2 A. Uh-huh (affirmative response).

3 Q. Is it your contention that David Donnie Williams  
4 has physically abused your brother? That's what  
5 you are testifying to; is that right?

6 A. Yes.

7 Q. Would it surprise you if your brother testified  
8 under oath that David Donnie Williams never laid a  
9 hand on him?

10 You are surprised to hear that, aren't you?

11 A. He would if he could.

12 Q. Would he be making that up?

13 A. Huh-uh.

14 Q. Surely, if David Donnie Williams has physically  
15 abused him in the past, he would remember that,  
16 wouldn't he? You know of no memory lapse that your  
17 brother has, do you?

18 A. Huh-uh.

19 Q. You don't know of any memory lapse, do you?

20 A. No.

21 Q. Your sister, would it surprise you to know that she  
22 testified under oath that David Donnie Williams has  
23 never attacked her or abused her in the past?

24 You know of no memory lapse that she has, do  
25 you?

1 A. Nope.

2 Q. Would it surprise you to know your brother  
3 testified he has never, ever saw David Donnie  
4 Williams lay a hand on your mother? Would that  
5 surprise you? You know of no memory lapse in that  
6 respect either, do you?

7 A. (No response.)

8 Q. Would it surprise you to know your sister testified  
9 that she has never saw David Donnie Williams lay a  
10 hand on your mother. You know of no memory lapse  
11 with respect to her testifying like that either; is  
12 that not correct?

13 A. Huh-uh (negative response).

14 Q. Now, you are testifying openly in this court to the  
15 ladies and gentlemen of the jury that David Donnie  
16 Williams has physically assaulted with a pattern  
17 your mother; is that what you are saying?

18 A. Yes.

19 Q. And, likewise, David Donnie Williams has a pattern  
20 of physically assaulting you; is that what you are  
21 saying?

22 A. Yes.

23 Q. And, likewise, your brother and your sister; is  
24 that right?

25 A. Yes.

1 Q. And isn't it strange that your brother, who you say  
2 is honest, and your sister, who you say is honest,  
3 their testimony is entirely different than your  
4 mother and your testimony? That's odd; isn't that  
5 right?

6 A. No.

7 Q. Which one is true? Who should this court believe,  
8 the two kids who say, I never saw David Donnie  
9 Williams hit my mama? Or should they believe you,  
10 who say, I seen him attack my mama all the time?  
11 They both can't be right, can they?

12 A. Well --

13 Q. Something's wrong, something's odd, isn't it? Now,  
14 you say also that David Donnie Williams has beat  
15 your mama up. If I may characterize that and he  
16 has done that all the time is that right?

17 A. Uh-huh (affirmative response).

18 Q. She has got off work and he just beat her up,  
19 accuse her of sleeping with another man and all of  
20 the sudden attack her; is that right?

21 A. Yes.

22 Q. You saw that happen?

23 A. Yes.

24 Q. Would it surprise you to know that your mother  
25 never produced a single photograph showing a black

1 eye.

2 Did your mama suffer a black eye?

3 A. Yeah, she suffered one.

4 Q. She did?

5 A. Yes.

6 Q. Was her lip busted?

7 A. Plenty of times.

8 Q. Was she bruised in the face?

9 A. She had plenty of bruise marks.

10 Q. Was she swollen?

11 A. (Witness nods affirmatively.)

12 Q. Is that your contention?

13 A. (Witness nods affirmatively.)

14 Q. Would it surprise you to know that your brother  
15 stated he ain't never seen your mama with a black  
16 eye? Isn't that shocking? He was there because  
17 you admitted that at all times your brother has  
18 stayed up under the same roof with your mother;  
19 isn't that true?

20 A. Yes.

21 Q. If she had a black eye, he would know it because he  
22 would see it? Wouldn't you agree with that?

23 A. (Witness nods affirmatively.)

24 Q. That's a yes? Am I right about that?

25 A. Yes.



1 Q. Your brother don't wear glasses, do he?

2 A. Not at the moment.

3 Q. If your mama had a black eye, you know of no visual  
4 restriction that would stop him from seeing a black  
5 eye, do you? You saw the black eye, you are saying  
6 that?

7 A. Yeah, I saw it.

8 Q. Can you tell us how it is that you saw it and Q  
9 didn't see it?

10 A. I seen it with my own eyes.

11 Q. Can you tell us how you saw it and Narkesha didn't  
12 see it?

13 A. She was a younger child then. She didn't  
14 understand then.

15 Q. She didn't understand?

16 A. Nope.

17 Q. You testified that this physical abuse has gone on  
18 over the last seven years; isn't that your  
19 testimony?

20 A. Yes.

21 Q. Has he beat your mama up in 2004?

22 A. He has tried to.

23 Q. Has he beat her up in 2003?

24 A. Uh-huh (affirmative response).

25 Q. Did she suffer bruises?

1 A. Yeah.

2 Q. A black eye?

3 A. Uh-huh (affirmative response). In 2001 she did.

4 Q. Busted lip and everything else; is that what you  
5 are contending?

6 A. Uh-huh (affirmative response).

7 Q. Now, Narkesha would remember that, wouldn't she?

8 A. Yeah, but she was younger then. She is a child and  
9 she don't understand.

10 Q. Q wasn't a child then. He'd know about it. Now,  
11 what this case is about, you talked to your mother  
12 many times about this case, about Donnie Williams,  
13 haven't you?

14 A. Huh-uh.

15 Q. You ain't never talked to your mama about Donnie?

16 A. Not about this case.

17 Q. What about Donnie? Have you ever told your mama,  
18 mama you ought to leave him alone, he ain't no  
19 good? You ever told your mama that?

20 A. Yeah.

21 Q. Many times, haven't you?

22 A. Uh-huh (affirmative response).

23 Q. You dating anybody right now?

24 A. (Witness nods affirmatively.)

25 Q. You are.

1           You didn't approve of your mama shacking up  
2           with Donnie, did you?

3           MRS. PENN: I object, Your Honor; irrelevant.

4           MR. AUSBORN: That's a good question.

5           THE COURT: She can answer it.

6           Q. Did you?

7           A. Well, that right there wasn't none of my business.

8           Q. Excuse me?

9           A. It wasn't none of my business.

10          Q. Okay. Now, mama is a good person. You agree with  
11          that?

12          A. Yes.

13          Q. Mama is a smart person?

14          A. (Witness nods affirmatively.)

15          Q. Reasonable person?

16          A. (Witness nods affirmatively.)

17          Q. Is that a question?

18          A. Uh-huh (affirmative response).

19          Q. Rational person

20          A. (Witness nods affirmatively.)

21          Q. Is that a question?

22          A. Yes.

23          Q. Can you explain to these ladies and gentlemen of  
24          the jury why mama, being a reasonable and rational  
25          person, stayed with a man that beat her up over the

1 last seven years?

2 A. Because she was in love with him.

3 Q. In love?

4 A. And he had talked her in many times of going back  
5 with him while he was locked up.

6 Q. In love. So in love with a man to where when he  
7 wants to break the relationship off, mama comes up  
8 with these bogus charges to make sho' he don't  
9 leave?

10 MRS. PENN: Your Honor, first of all he is  
11 testifying. And they are facts not in evidence.

12 THE COURT: Sustained.

13 Q. Have you ever heard the term crazy in love? Ever  
14 heard of that?

15 A. Yeah.

16 Q. Crazy in love means you do some crazy things while  
17 you are in love.

18 That's basically what it means doesn't it?

19 A. Yeah.

20 Q. It is crazy to stay with a man who has beat you up  
21 for the last seven years; that's crazy, ain't it?

22 A. Yeah, it's crazy. But when she try to work it out  
23 then --

24 Q. It is crazy to stay with a man you contend don't  
25 pay you one dime towards bills or anything. Isn't

1           that crazy?

2       A.     (Witness nods affirmatively.)

3       Q.     That's crazy, isn't it?

4       A.     It's crazy. But when you love somebody, you love  
5           somebody. And when they beat on you, you are not  
6           going to take it.

7       Q.     It is crazy to stay with a man bringing crack  
8           around you and your kids, isn't it?

9           MRS. PENN: He is arguing facts not in  
10          evidence.

11          THE COURT: Sustained.

12       Q.     It is crazy to stay with a man that violently  
13           assaults your kids. Ain't that crazy?

14       A.     Yes.

15       Q.     You said Donnie ran you off the road?

16       A.     No. He almost ran me off the road.

17       Q.     Almost ran you off the road.

18           What day was that?

19       A.     It was on a Saturday, but I don't remember the  
20           date. And my child was in the car.

21       Q.     You don't remember the date?

22       A.     No, I don't.

23       Q.     Do you remember the month?

24       A.     I remember what happened.

25       Q.     Donnie ain't on trial for harassment of you?

1 A. Yes, he have. When he tries to run me off the road  
2 and my child is in the car and my child is in  
3 danger.

4 Q. My question to you is this: You know that Donnie  
5 is on trial for harassment, domestic violence  
6 against your mother. Am I right about that?

7 A. Right.

8 Q. And Donnie is on trial for stalking your mother;  
9 isn't that right?

10 A. Right.

11 Q. Donnie is not on trial for stalking you?

12 A. He was doing that just to get her.

13 Q. Answer my question.

14 Is Donnie on trial for stalking you?

15 A. No, he is not.

16 Q. Is Donnie on trial for committing harassment  
17 domestic violence against you?

18 A. No, he is not.

19 Q. What this case is about, is about you and your  
20 mother getting together and conspiring, talking  
21 about how you can take down Donnie Williams because  
22 you talked about it many, many times?

23 A. No, we didn't.

24 Q. Did you not?

25 A. No, we didn't. I don't know how we going to take

1 him down. Whatever happens, happens. What he did,  
2 he did it.

3 Q. He did it. He beat your mama up. Were you brother  
4 and sister around when he beat your mama up?

5 A. Half of the time they was. They couldn't sleep;  
6 lay there at night when she got off work.

7 Q. Couldn't sleep?

8 A. School nights.

9 Q. But they don't remember. That's odd, isn't it?

10 A. (No response.)

11 Q. Is it possible that they don't remember because it  
12 never happened?

13 That's the explanation for why they didn't  
14 recall it and testify because it never happened;  
15 isn't that right?

16 A. No.

17 Q. You say he has beat you up?

18 A. Yes, he did.

19 Q. Let me see one photograph showing you suffered an  
20 injury at the hand of Mr. David Donnie?

21 A. I didn't have any injury, but I had some scratches  
22 and took it to the human resources.

23 Q. Okay. How tall are you?

24 A. 5' 5.

25 Q. How much do you weigh?

1 A. 105.

2 MR. AUSBORN: David, stand up a minute, please.

3 Q. David is about 5'10.

4 MR. AUSBORN: How tall are you?

5 THE DEFENDANT: 5' 10.

6 THE COURT: He is not under oath. If you want  
7 to put him on the stand --

8 Q. David is a whole lot bigger than you; am I right?

9 A. Uh-huh (affirmative response).

10 Q. You said he attacked you?

11 A. Uh-huh (affirmative response).

12 Q. Did he hit you with fist?

13 A. Yeah, I had scratches on my face.

14 Q. Did he slap you like that or like that? Which one?

15 A. Both of them.

16 Q. Both. Beat you down like a man. Is that what you  
17 are telling this Court?

18 A. Uh-huh (affirmative response).

19 Q. Let me see your medical report that backs up your  
20 injuries.

21 A. I didn't have any injury.

22 Q. He beat you up like that and you didn't have any  
23 injuries?

24 A. Because I defended myself. I'm not going to sit up  
25 and let him fight me.



1 Q. You pretty strong?

2 A. (Witness nods affirmatively.)

3 Q. Did you get the best of David on that day when  
4 y'all fought?

5 A. I tried.

6 Q. You tried to?

7 A. (Witness nods affirmatively.)

8 Q. Look like David -- You agree you got the best of  
9 David and David ought to be in fear of you and not  
10 you of David? You agree with that?

11 A. (Witness nods affirmatively.)

12 Q. You in school right now?

13 A. No.

14 Q. How far did you go in school?

15 A. To the 12th grade. I graduated.

16 Q. 12th grade. You ever had a subject, literature?

17 A. Yes.

18 Q. That's what you are doing right now. You are story  
19 telling right now, aren't you?

20 A. No.

21 Q. You ever took theater?

22 A. Who?

23 Q. You ever took theater in high school?

24 A. No.

25 Q. You ever aspired to be an actress?

1 A. No.

2 Q. You ought to check in to that one.

3 You were asked on direct examination by  
4 Mrs. Penn about the 2001 ordeal when David  
5 violently assaulted you and your mom. Do you  
6 recall that?

7 A. Uh-huh (affirmative response), yeah.

8 Q. David was not found guilty of assault against you  
9 and your mama. You can't disagree with that;  
10 that's the truth. He wasn't found guilty of  
11 assault; that's true. Am I right about that?

12 A. No.

13 Q. Show me one court order that adjudicated David  
14 Donnie Williams guilty of assault against your mama  
15 in 2001.

16 You got one?

17 A. (Witness shakes head negatively.)

18 Q. Show me one court order adjudicating David Donnie  
19 Williams guilty of assault in 2001 against  
20 yourself.

21 You got one? Yes or not, you got one?

22 A. I don't have it with me.

23 Q. You don't have it with you?

24 A. (Witness shakes head negatively.)

25 Q. The clerk's office may be closed right now, but I

1           bet you they open up at 1:30. You think you can go  
2           get me a court order saying he was found guilty of  
3           assault against you and your mama in 2001? You  
4           think you can find that? You think you can?

5       A.    (No response.)

6       Q.    You ain't going to find that because it don't  
7           exist; isn't that right.

8           MRS. PENN: He is testifying.

9           MR. AUSBORN: That's a question I'm asking,  
10          counselor.

11          MRS. PENN: He's testifying.

12       Q.    Does it exist?

13       A.    It exist. I know it do.

14       Q.    It does. We'd like to see it.

15           Now, you said David Donnie Williams had a  
16          pattern of harassing you and harassing your mama  
17          every day. That's what you said, isn't it?

18       A.    Uh-huh (affirmative response).

19       Q.    Show me a warrant and affidavit where you filed  
20          harassment charges against David Donnie Williams.

21           You got one?

22       A.    (Witness nods affirmatively.)

23       Q.    You got one?

24       A.    Yeah.

25       Q.    Is that a yes?

1 A. Yeah.

2 Q. Can I see it so I can show it to the ladies and  
3 gentlemen of the jury? Have you got it with you  
4 today?

5 A. Huh-uh (negative response).

6 Q. Did you ever go to the police station and ask for a  
7 trespassing, or go to the clerk's office and ask  
8 for a trespassing notice against Mr. David Donnie  
9 Williams to stop him from harassing you?

10 A. I went to the police station.

11 Q. Excuse me.

12 A. I went to the police station and they should have  
13 it on file.

14 Q. You got a trespass notice that enjoins him from  
15 having any contact with you? You got that?

16 A. (Witness nods affirmatively.)

17 Q. I'd like to see it.

18 Did you ever go to this court clerk's office  
19 and applicate, petition an order for protection  
20 from domestic abuse against this young man you  
21 contend has violently beat you over the last ten  
22 years? You ever did that?

23 A. Yeah, I did.

24 Q. I would like to see it. So you say you've got a  
25 petition for protection from abuse?

1 A. When he fought me in 2001, I do.

2 Q. And you got a notice of trespass. You got that; is  
3 that right? Is that right?

4 A. (Witness nods affirmatively.)

5 Q. Is that a yes?

6 A. Yeah.

7 Q. And you got a warrant and affidavit for harassment?

8 A. Yeah.

9 Q. You got that?

10 A. Yeah.

11 Q. We'd like to see it.

12 You know it is something serious when you got a  
13 young man on trial for these trumped up charges  
14 right here that you can't prove. Tell the truth  
15 and shame the devil.

16 Did your mama tell you to take this stand and  
17 build a railroad around David Williams?

18 A. Huh-uh (negative response). I volunteered.

19 Q. She didn't tell you that.

20 How did you come up with this?

21 A. I didn't come up with anything.

22 Q. And you still say you don't hate him?

23 A. I don't hate anybody.

24 Q. Whew, I'd hate to be your friend. Whew.

25 And it is your testimony up under oath that

1 everything you said is the truth and nothing but  
2 the truth?

3 A. (Witness nods affirmatively.)

4 Q. Now, finally, you testified that you saw this  
5 prosecutor, Mrs. Honorable Penn meet with your  
6 brother and sister separately. You admitted that,  
7 didn't you? Am I right about that?

8 A. (Witness nods affirmatively.)

9 Q. Is that a yes?

10 A. She didn't talk to them. She just told them to  
11 tell the truth.

12 Q. Hold on a minute, now. Don't get ahead of me.

13 Did you see Mrs. Penn meet with "Q" and  
14 Narkesha separately from you and your mama?

15 A. I didn't see it.

16 Q. You saw her -- Was it your testimony that you did  
17 see her in the company of your brother and sister  
18 separate from you and your mama? You testified to  
19 that?

20 A. (Witness nods affirmatively.)

21 Q. Am I right?

22 A. (Witness nods affirmatively.)

23 Q. Is that a yes?

24 A. Yes.

25 Q. Unless you was a little fly on the wall, you don't

1 know what this prosecutor told Narkesha and "Q", do  
2 you? You don't know, do you? Am I right about  
3 that? You don't know what she told them, do you?  
4 Do you?

5 Is that a yes, you agree with that, you don't  
6 know? Say I don't know.

7 You're a big girl. Go ahead and tell us the  
8 truth.

9 Say I don't know. Go ahead and look them in  
10 the eye and tell them. Say I don't know.

11 A. I know one thing. She didn't talk about this case.

12 Q. Hold on. I want you to tell them that.

13 Say, ladies and gentlemen of the jury, I don't  
14 know what she told them. Look them in the eye. Go  
15 ahead. It's okay. They regular folks just like  
16 you and I.

17 Look them in the eye. Can you do it?

18 A. I don't know.

19 Q. They want to see your eyes. They want to make  
20 contact with you.

21 Can you do it?

22 A. I don't know.

23 Q. My mama and dad always told me if a person can't  
24 make --

25 MRS. PENN: I object.

1 MR. AUSBORN: It's a question. I'm going to  
2 frame it as a question.

3 Q. Mama and dad always told me if you can't look a  
4 person in the eye, you must got something to hide.

5 Have you ever heard of that?

6 A. I don't have anything to hide.

7 Q. Have you ever heard of that, though?

8 A. Yeah, I've heard of it.

9 Q. Let's test you.

10 Look them in the eye and tell them, I don't  
11 know what this prosecutor told my brother and  
12 sister.

13 A. I don't know what the prosecutor told my brother or  
14 sister.

15 MR. AUSBORN: No further questions of this  
16 witness, Your Honor.

17 THE COURT: Mrs. Penn, anything?

18 MRS. PENN: Just a few follow-up questions,  
19 Judge.

20 REDIRECT EXAMINATION

21 BY MRS. PENN:

22 Q. I want you to look over here. Look at each one of  
23 these jurors individually. Look at them. Tell  
24 them that you lied to them about what happened on  
25 April 17th. Tell them.



1 A. (Witness laughs.)

2 Q. Is that what you did? Did you lie to them about  
3 what happened on April 17th?

4 A. No, because I don't know what happened on April  
5 17th.

6 Q. Tell them that you lied to them about what happened  
7 when you got to that house and your sister was not  
8 there. Can you tell them that you lied to them  
9 about that?

10 A. No, because I didn't lie.

11 Q. Do you have any idea why your sister and brother  
12 would get up on the stand and tell anything that  
13 wasn't true?

14 A. I don't know because whatever they saw I believe  
15 they would tell it, whatever they saw.

16 Q. Were they nervous about coming up here today?

17 A. A little bit.

18 Q. And on April 17th when Donnie Williams brought your  
19 sister back to the trailer, did you see him? I  
20 don't want to know what nobody else told you.

21 MR. AUSBORN: Your Honor, I interpose an  
22 objection. It wasn't April 17th. April 17th  
23 wasn't the date. It was actually March 30th. We  
24 just want it characterized --

25 THE COURT: Sustained.

1 Q. March 30th, did you see exactly what you told the  
2 ladies and gentlemen of the jury?

3 A. Yes, I did.

4 Q. And several times it's been made to look like I've  
5 done something improper.

6 When I talk to you about this case, was it a  
7 long talk?

8 A. No.

9 Q. Did I suggest to you that you needed to say that  
10 Donnie had done anything to your mama?

11 A. No.

12 Q. I want you to think very carefully about this. And  
13 I know that you've talked to your mama about what  
14 has happened in all of this. You had to have  
15 because she was staying with you; is that correct?

16 A. Yes.

17 Q. Tell the ladies and gentlemen of the jury if it is  
18 true. I want you to tell them that everything you  
19 told us, your mama told you to say?

20 A. My mama didn't tell me to say anything. The only  
21 thing she told me was to tell the truth and tell  
22 what I saw.

23 Q. And you are speaking the truth about what you saw?

24 A. Yes.

25 Q. You not speaking the truth about what Quadarius

1 saw. You are not speaking the truth about what  
2 Narkesha saw. You can only tell us what you saw;  
3 is that correct?

4 A. Yes.

5 Q. And you saw what happened to your mother on March  
6 30th; is that correct?

7 A. Yes.

8 Q. And did you see any physical contact between her  
9 and Donnie on March 30th?

10 A. Say that again.

11 Q. On the day that he brought Narkesha back after  
12 taking her from the front doorsteps, did you see  
13 any physical contact between Donnie and your  
14 mother?

15 A. Yes. He was pulling on her --

16 Q. Sit here and look in the eyes of these jurors and  
17 tell them that's what you saw?

18 A. Yes, that's what I saw.

19 Q. And you saw and heard Donnie Williams beating on  
20 your door and on your window?

21 A. Yes.

22 Q. This stuff happened. You are not a fiction writer,  
23 are you?

24 A. No.

25 Q. Did you just make this up?

1 A. No.

2 Q. And how long has your mother and Donnie been  
3 dating?

4 A. It's been like -- I'm not sure; about six or seven  
5 years.

6 Q. Okay. And Donnie has stayed with you on occasion;  
7 is that correct?

8 A. Not with me.

9 Q. Not with you, but with your mom?

10 A. Yes.

11 Q. And you said the relationship started out good at  
12 first but soon went bad, did it not?

13 A. Yes.

14 Q. Six or seven years ago would have been what year if  
15 you count back from 1997 -- seven years ago, 1998  
16 six years ago.

17 It took from 1997 or 8 to 2004 for you to come  
18 up with a story that David Donnie Williams harassed  
19 and stalked your mother?

20 A. No.

21 Q. In fact, it's not a story, is it?

22 A. No.

23 Q. And you didn't make any of this up?

24 A. No.

25 MRS. PENN: That's all I have.

RECROSS-EXAMINATION

BY MR. AUSBORN:

Q. Miss Williams, I notice that when you're questioned concerning the violent assault against you and your mother in the past, that hurts you.

I notice that you -- you started to get teary eyed and break down and et cetera. Would you agree with that?

But I notice that when you did that, you only did that when this talented prosecutor questioned you. You never did that when I questioned you.

A. Can you tone your voice a little bit?

Q. Excuse me.

A. Can you tone your voice.

Q. Now, who told you to do that?

A. Nobody. You getting rowdy with me like I said something wrong.

Q. Who told you how to testify, break down in court and get the sympathy of this Court?

A. Nobody.

Q. Nobody told you that.

You see that on tv?

A. No.

Q. You learn that on your own? Don't you know if you are trying to get the sympathy from the Court, from

1 the ladies and gentlemen of the jury, you got to be  
2 consistent? You didn't break down when I  
3 questioned you about this violent assault against  
4 your mama? I saw not one tear emerge from your  
5 face. But yet every time this prosecutor  
6 questioned --

7 MRS. PENN: Your Honor, I object to  
8 mischaracterizing what happened here in court.

9 MR. AUSBORN: The jury will remember, Your  
10 Honor.

11 MRS. PENN: You said every time. Make it  
12 right.

13 THE COURT: Sustained.

14 Q. Can you explain that?

15 A. Explain what.

16 Q. Did she do a better job of making you remember this  
17 assault than I did?

18 A. No. It is what I saw and not what I heard and what  
19 she told me.

20 Q. She can break you down, but I can't? She can make  
21 you cry but I can't?

22 MRS. PENN: Your Honor, asked and answered.

23 THE COURT: Sustained.

24 MR. AUSBORN: Nothing further or this witness,  
25 Your Honor.

1 THE COURT: Anything else for the prosecution?

2 MRS. PENN: No.

3 THE COURT: Hurry up and get down before they  
4 ask you something.

5 (Whereupon the witness left the stand.)

6 THE COURT: Come back at 1:30. Keep in mind  
7 the recess instruction.

8 (Whereupon the jury was given a lunch recess,  
9 left the courtroom, and the following  
10 proceedings were had outside the presence of  
11 the jury:)

12 MOTIONS

13 THE COURT: For the Record, the State has  
14 rested.

15 MRS. PENN: Yes, Judge.

16 MR. AUSBORN: May it please the Court. At this  
17 time, Your Honor, on behalf of the defendant David  
18 Donnie, we would move for judgment of acquittal as  
19 to both charges of the two respective indictments.

20 We believe that the State has woefully failed  
21 to meet its requisite burden of proof by proving  
22 beyond a reasonable doubt and by the smaller  
23 standard of prima facie of showing that Mr. David  
24 Donnie Williams has committed the two offenses with  
25 which he is charged.

1 We reference to the Court that as to the  
2 stalking case specifically, that the state has  
3 failed to show that David Donnie Williams stalked  
4 the respective victim on April 17th and would elude  
5 to this Court that the State has called a number of  
6 witnesses, all of which who have stated up under  
7 oath could not testify that any stalking took place  
8 on April 17th. So therefore the alleged  
9 contentions of the alleged victim are  
10 uncorroborated.

11 We would further elude to this Court that the  
12 credibility of the victim in this case has been no  
13 doubt attacked and attacked with utmost vigor.

14 THE COURT: You mentioned corroboration.

15 With regard to the stalking charge, do you have  
16 any case that has a corroboration element,  
17 something like the co-defendant's testimony?

18 MR. AUSBORN: What's that, Your Honor?

19 THE COURT: You mentioned corroboration as if  
20 it is some sort of element like you would have in a  
21 co-defendant situation.

22 MR. AUSBORN: What we have, Your Honor, is the  
23 law does not requisite that the testimony be  
24 corroborated by the victim. However, as the Court  
25 is aware, when the victim and/or witness takes the



1 stand at all times that particular witness'  
2 voracity is called into question.

3 So, therefore, in this case, if we have  
4 effectively challenged, undermined, discredited the  
5 testimony of the victim in this case, there is no  
6 supporting testimony that would bolster, buttress  
7 the State's contention. And the State's charge in  
8 stalking fails evidently because there is no  
9 witness who can affirm that my client did in fact  
10 stalk her on April 17th.

11 We further would indicate to the Court that by  
12 the victim's own testimony, these parties had a  
13 long-standing history of an on-and-off  
14 relationship. And the victim's witnesses, in fact,  
15 have affirmed and the victim herself has affirmed  
16 that he would come and go in her life. And we  
17 contend in this case that even if the State has  
18 proven to the satisfaction of this Court either  
19 conclusively or by prima facie showing that she had  
20 an intent to enjoin him from having any contact, we  
21 state that that nexis was breeched when she  
22 effectively got back with him. So, therefore, that  
23 constitutes as far as the defense is concerned a  
24 forgiveness, a condemnation as far as the charge of  
25 harassment is concerned.

1           The State indicted my client under harassment,  
2           i.e. the domestic violence part of the statute.  
3           And that part is discredited because the victim has  
4           produced no tangible evidence that would, of  
5           course, confirm or corroborate that she suffered  
6           any injuries in this case. And although I know  
7           that is not a requisite that she have injuries, but  
8           we think her credibility has been assailed by that  
9           virtue as well; namely, by the State's own two  
10          witnesses who have testified and accurately contend  
11          that my client has never laid a hand on the alleged  
12          victim; and, for that matter, the two children or  
13          the daughter.

14          We believe that using the standard of totality  
15          of the circumstances in this case that it certainly  
16          would be a reasonable conclusion for this Court to  
17          believe that the State has not met its requisite  
18          burden of proof; and, therefore, judgment of  
19          acquittal apply under requisite standard of law be  
20          granted on behalf of the defendant.

21          MRS. PENN: Your Honor, I don't believe the  
22          State's standard is beyond a reasonable doubt. The  
23          state has met its burden of prima facie case. We  
24          placed witnesses on the stand and those witnesses  
25          have testified to the events of March 25th, 30th

1 and April 17th. While their voracity may be in  
2 question, that is a question of fact for the jury  
3 and not a question of law that is to be dismissed  
4 at this point. That is for the jury to decide at  
5 this time, and the State has met its burden of  
6 proof, and I know of no law that requires  
7 corroboration on the part of the plaintiff. And in  
8 any case, if you are on the opposing side, you are  
9 indeed supposed to test the evidence or test the  
10 witness and their voracity, but that does not mean  
11 the State has not met its prima facie burden.  
12 There is no burden upon the State to show that  
13 there are any injuries to the defendant.

14 Indeed, I have no idea where counsel is coming  
15 from with that argument. That is not one of the  
16 charges in this case. And whether or not she had  
17 injuries is something that is brought up on the  
18 stand and can be taken into consideration in the  
19 jury, whether or not they believe there was. And  
20 it could indeed be seen as circumstantial evidence  
21 in this case whether or not they believe it, but it  
22 has no bearing on the prima facie case that the  
23 State has to present to this Honorable Court to  
24 surmount the burden that is placed on them in this  
25 type of motion to dismiss.

1 THE COURT: Anything else?

2 MR. AUSBORN: Nothing further.

3 THE COURT: The terms motion for acquittal is  
4 taken as a motion to the general affirmative charge  
5 and is therefore denied.

6 MR. AUSBORN: Thank you, Judge.

7 THE COURT: Y'all get your witnesses up.

8 (Whereupon a lunch recess was taken by all.)

9 (Whereupon the jury returned to the jury box,  
10 and the following proceedings were had in open  
11 court:)

12 (Defendant present with counsel.)

13 THE COURT: The two jurors on the end, y'all  
14 make sure your chair is not too close to that edge  
15 back there. I'd hate for you to fall off the jury  
16 stand.

17 Ladies and gentlemen, the State has rested and  
18 the defense will call their first witness.

19 Go ahead, Mr. Ausborn.

20 MR. AUSBORN: May it please the court. We call  
21 Robert Edwards.

22 ROBERT EDWARDS

23 having first been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. AUSBORN:

1 Q. State your full name for the Record, please.

2 A. Robert Earl Edwards.

3 Q. Mr. Edwards, state your current address.

4 A. 788 Cherokee Trail, Tallassee, Alabama.

5 Q. And are you employed? Are you currently employed?

6 A. Nope.

7 Q. Do you know the alleged victim in the case, that  
8 being Ms. Callie Williams?

9 A. Yes.

10 Q. Are you related to her by blood or marriage?

11 A. No.

12 Q. Do you know the alleged defendant in the case, that  
13 being Mister --

14 A. Yes, sir.

15 Q. -- David Donnie Williams?

16 A. Yes, sir.

17 Q. Are you related to him by blood or marriage?

18 A. No.

19 Q. How long have you known Ms. Callie Williams?

20 A. About six or seven years.

21 Q. Six or seven years. How long have you known my  
22 client Mr. David, Donnie Williams?

23 A. About the same.

24 Q. About the same. Okay.

25 Now I asked you to come here today in order to

1 give sworn testimony, okay. Have I promised you  
2 any hope of a reward, incentive or benefit in order  
3 for you to come here today and give testimony?

4 A. No.

5 Q. Likewise, have I made any threats, placed you up  
6 under duress or coercion in order to get you to  
7 come here and testify?

8 A. No.

9 Q. I did not subpoena you to get you to come here; is  
10 that correct?

11 A. That's correct.

12 Q. You come in here freely of your own volition; is  
13 that correct?

14 A. Right.

15 Q. Now, you know in this case that my client Mr. David  
16 Donnie Williams is charged with two indictments;  
17 one for stalking; is that correct?

18 A. Yes.

19 Q. You know that there is a second indictment in this  
20 case where he is charged with harassment, i. e.  
21 domestic violence?

22 A. Yes.

23 Q. Now, in interest of expediency, I'm going to take  
24 you directly to the core issues in the case, and  
25 that's stalking and domestic violence.

1 In the time in which you have been affiliated  
2 with Mr. David Donnie Williams and Ms. Callie  
3 Williams, tell the ladies and gentlemen of the jury  
4 have you ever seen Mr. David Donnie Williams stalk  
5 Ms. Callie Williams.

6 A. No. No.

7 Q. In the time in which you have been affiliated with  
8 my client Mr. David Donnie Williams and Ms. Callie  
9 Williams, have you ever seen my client Mr. David  
10 Donnie Williams harass, i.e. commit domestic  
11 violence against Ms. Callie Williams?

12 A. No.

13 Q. How often would you see -- Let me stop you.

14 During the six to seven years that you have  
15 been acquainted with Mr. David Donnie Williams and  
16 Ms. Callie Williams, did they live together?

17 A. Yes.

18 Q. Did they live together the whole time or was it on  
19 and off living arrangement?

20 A. On and off.

21 Q. During that duration of time, six, seven years or  
22 so, how frequently would you see David and Callie?

23 A. Just about every day.

24 Q. Every day. Okay. Tell us how it was that you  
25 would see them virtually every day. Would they

1           come to the place you were staying at or visiting  
2           at? Or would you go to their place? Or would it  
3           be a combination of the two?

4       A.    It would be a combination. Most of the time I went  
5           and carried them to work.

6       Q.    When you say, carried them to work, was that  
7           carrying Donnie or Callie?

8       A.    Both of them.

9       Q.    They worked at the same location, that being Wayne  
10          Farms; is that correct?

11      A.    Yes.

12      Q.    You are not here for David Donnie Williams, are  
13          you?

14      A.    No. I'm just here to tell the truth about it.

15      Q.    You are not here -- Likewise, you are not here for  
16          Ms. Callie Williams; right?

17      A.    Right.

18      Q.    You are here for the truth. You are here for  
19          justice.

20               Now, in the time frame in which you came in to  
21          physical contact with Ms. Callie Williams over the  
22          last six or seven years and Mr. Donnie Williams,  
23          tell the ladies and gentlemen of the jury, did you  
24          ever see her with a black eye?

25      A.    No.



1 Q. Did you ever see her with a busted lip?

2 A. No.

3 Q. You ever see her with bruises on her cheeks?

4 A. No, sir.

5 Q. Did she ever one time complain to you that she had  
6 been violently assaulted by Mr. David Donnie  
7 Williams?

8 A. No.

9 Q. Were you close enough to her to where if she was  
10 experiencing a problem with Mr. David Donnie  
11 Williams she would confide in you and tell you, can  
12 you talk to David, he's beating me up or I'm having  
13 a problem with him?

14 Do you feel like she would be close enough to  
15 you where she would talk to you about that? Were  
16 you close enough to where you would talk to her?

17 A. We were close enough, but she didn't ever talk  
18 about anything like that.

19 Q. And as far as you could observe, there was no  
20 reason to?

21 A. That's right.

22 Q. Did she ever come to you and say, Robert, tell  
23 Donnie to leave me alone and get out of my life; I  
24 don't want him no more.

25 Has she ever told you that?

1 A. No.

2 Q. Has she ever told you, Robert, get David out of my  
3 house, he assaulted my kids, beating up my kids.

4 Has she ever told you that?

5 A. No.

6 Q. Were you -- You know her kids; is that right?

7 A. Yes.

8 Q. I believe Quantarius -- Narkesha --

9 MRS. PENN: I object, Your Honor. If he is  
10 going to ask a question, ask a question.

11 Don't tell him the names of the children.

12 Q. Do you know the names of the kids?

13 A. Not really.

14 Q. You know them when you see them; right?

15 A. Yes, sir.

16 Q. Do you ever see the eight-year-old girl?

17 A. Uh-huh (affirmative response).

18 Q. Beat up?

19 A. No.

20 Q. Bruises on her?

21 A. No.

22 Q. Did you ever see the 14-year-old son beat up,  
23 bruises on him?

24 A. No, sir.

25 Q. You know the 21-year-old daughter that she has,

1 Lakeisha?

2 A. Yes.

3 Q. Did you ever see her with bruises on her, sir?

4 A. No.

5 Q. Likewise, did you come into contact with them  
6 frequently also?

7 A. Yes.

8 Q. Would they be at the house?

9 A. They would be at the house. And sometimes they  
10 would be over at Mr. Donnie William's mother's  
11 house.

12 Q. Did the kids ever come to you and say, David is  
13 beating up on me?

14 A. No.

15 Q. Now, did David and Callie feel close enough to you  
16 to where when they were having problems they'd sit  
17 down and they'd talk to you and get some brotherly  
18 advice?

19 A. Yes.

20 Q. Do you recall one or more occasions in which they  
21 came to you, they both came to you and told  
22 you --

23 MRS. PENN: I object, Your Honor, if he is  
24 going to --

25 MR. AUSBORN: I can lay a predicate. They are

1 witnesses. They are parties.

2 THE COURT: The way you started is leading,  
3 but...

4 Q. Were you close enough to where they would come to  
5 you from time to time and talk to you about  
6 problems they were having?

7 A. Yes.

8 Q. Did David ever come to you and tell you that he  
9 wanted to break the relationship off with Callie?

10 A. Yes.

11 Q. How often did he approach you about that?

12 A. Several times.

13 Q. Let's lay a time frame.

14 What year was that he came to you or what years  
15 was it?

16 A. March of 2003.

17 Q. March of 2003. Now this is 2004 here.

18 Are you saying it was March of last year or  
19 March of this year?

20 A. March of last year.

21 Q. Have you ever been around David and Callie at the  
22 same time?

23 A. Yes.

24 Q. And heard David tell Callie that he wanted to break  
25 the relationship off?

1 A. Yes.

2 Q. How would she respond when she heard that?

3 A. She would go crazy; acting up.

4 Q. Would she get upset?

5 A. Yes.

6 Q. Help us, if you will. When she got upset, would  
7 she get teary eyed, start to cry?

8 A. Yes.

9 Q. Would she get angry?

10 A. Right.

11 Q. When she got angry -- Was she a temperamental type  
12 person, easy to get angered?

13 A. Yes.

14 Q. When she got angry, how would she respond? Would  
15 she go to cursing?

16 A. Go to cussing and saying all different kinds of  
17 cuss words.

18 Q. Now, when you heard Donnie tell her he wanted to  
19 break the relationship off, tell the ladies and  
20 gentlemen of the jury how she would respond.

21 A. Before she have him she would send him to prison.

22 Q. Excuse me.

23 A. Before she would have him, she would just get rid  
24 of him, send him to prison before she would let  
25 anybody else have him.

1 Q. Now, were there times -- So she made a statement  
2 before I let you get out of my life, I'll see you  
3 in prison?

4 A. Yes.

5 Q. That's what you heard her say. Was she joking when  
6 she said that?

7 A. No.

8 Q. She was serious?

9 A. Yes.

10 Q. You've been around her long enough to know when she  
11 makes a statement whether or not it is one made in  
12 jest or whether it is one that is serious?

13 A. Yes, sir.

14 Q. And that was a serious threat?

15 A. Right.

16 Q. Did Donnie hear that threat?

17 A. Yes.

18 Q. Now, you know he has been charged with stalking?

19 A. Yes.

20 Q. You know that he has been charged with  
21 harassment/ domestic violence?

22 A. Yes.

23 Q. These are serious charges?

24 A. Right.

25 Q. And, of course, I don't want to invade the province

1 of this Court because that is under the auspices of  
2 this Court in terms of what the sanctions would be  
3 if he is convicted, but is the fact that we are  
4 here based upon the charges sworn out by her in  
5 your mind based upon what you heard, is strong  
6 evidence on her trying to make good on her threat?

7 A. Yes.

8 Q. Now, did y'all ever go out together like couples  
9 type thing or stuff like that?

10 A. No, sir. Mostly she would come over to his mama's  
11 house, and I would go down there all the time and  
12 take them to work or take Mr. Davis cigarettes.

13 Sometimes he would call me and be out.

14 Q. Now, you testified earlier they break -- they make  
15 up, break up, make up, break back up?

16 A. Yes. She would bring his clothes up to his mama's  
17 house and put him out. She would call -- The next  
18 day she would call and ask where Donnie was, and  
19 the next day she drive up picking up his clothes.

20 Q. So when she put him out, she put him out?

21 A. Yes, sir.

22 Q. A day later she would be back up to the house  
23 picking him back up, picking his personal  
24 belongings back up?

25 A. Yes, sir.

1 Q. Were there ever times when he left on his own  
2 accord? Ever seen instances where he moved back in  
3 at home without her putting him out?

4 A. Yes.

5 Q. Were there ever times after he no longer resided  
6 with her you, physically yourself, would take his  
7 belongings and take them back over to her house?

8 Did you ever do that? Ever move him back over  
9 to her house?

10 A. Yes.

11 Q. How many times would you say you did that?

12 A. About seven.

13 Q. So you say about seven or so times she has put him  
14 out?

15 A. Yes.

16 Q. And came back and got him, and then about another  
17 seven times, you have taken him and his belongings  
18 back over to her?

19 A. Yes.

20 Q. Seven plus seven is about fourteen; would you agree  
21 with that?

22 A. Yes, sir.

23 Q. Are those conservative numbers? In other words,  
24 those are like any other numbers; could have been  
25 more like fourteen times?



1                   You didn't keep an accurate count, did you?

2       A.     No, sir.

3       Q.     Did she have little -- play little love games with  
4             Donnie; call Donnie my husband?

5       A.     Yes.

6       Q.     Would she introduce Donnie to other people as  
7             that's my husband?

8       A.     Yes.

9       Q.     You heard her do that?

10      A.     (Witness nods affirmatively.)

11      Q.     As far as you observed, you see anything on the  
12             outside wrong with this relationship between the  
13             two? You didn't see nothing that was wrong with it  
14             on the outside?

15             In other words, it appeared that everything was  
16             okay; is that right?

17      A.     Yes.

18      Q.     2004. Bring you forward here; March, April, 2004.

19             Did you come into information that Donnie was  
20             going back to his baby mother? I think that's been  
21             Ms. Linda Caldwell, that they were trying to get  
22             their relationship back together?

23      A.     Yes.

24      Q.     Were you present back in March of this year when  
25             Donnie had a discussion with Ms. Callie Williams

1 and told her that he wanted to end the relationship  
2 because he was trying to make a reconciliation with  
3 his baby's mama?

4 Were you present?

5 A. Yes, sir.

6 Q. March 23rd, is that the date that took place?

7 A. Yes, sir.

8 Q. Whose birthday is march 23rd?

9 A. His mama.

10 Q. Is that the reason why you can vividly recall that  
11 happened because it occurred on the mother's  
12 birthday that this discussion took place?

13 A. Yes.

14 Q. How did she respond when he told her I'm going to  
15 back to my baby's mama?

16 A. She just got all upset.

17 Q. When she got upset, did you hear her trying to  
18 persuade Donnie, baby, don't do that; I love you;  
19 baby, don't leave me?

20 A. Yes.

21 Q. You heard her say something like that trying to  
22 persuade. Did you hear her say --

23 MRS. PENN: I object, your Honor; leading the  
24 witness.

25 THE COURT: Sustained.

1 Q. Did you ever hear her trying to stop Donnie from  
2 going back to his baby's mama?

3 A. Yes.

4 Q. She tried to stop him. Did you ever hear her tell  
5 him go back to your baby's mama?

6 A. No.

7 MRS. PENN: I object, Your Honor. It is  
8 leading the witness. If you want to ask that, ask  
9 it, but don't tell him what he's asking.

10 THE COURT: Sustained.

11 Q. Did Donnie tell her --

12 MRS. PENN: Your Honor.

13 Q. I tell you what, let me preface it.

14 March the 23rd, what was Donnie's final  
15 decision?

16 A. No. He was just going to break it off because they  
17 argue and stuff all the time.

18 Q. Callie was present; is that right?

19 A. Yes.

20 Q. David was present?

21 A. Yes, sir.

22 Q. You were present?

23 A. Yes.

24 Q. Was mama present?

25 A. Yes, sir.

1 Q. Was sister present, that being miss --

2 A. Yes, sir.

3 Q. Is that Lynn?

4 A. Right.

5 Q. Y'all were in one room?

6 A. Yes.

7 Q. Discussion going around the circle; is that right?

8 A. Yes, sir.

9 MRS. PENN: Your Honor, I make a continuing  
10 objection. He is leading the witness.

11 If he wants to ask a question, ask it. Let the  
12 witness tell.

13 THE COURT: Sustained.

14 MR. AUSBORN: I apologize, Counselor.

15 Q. Decision made; is that right?

16 A. Yes, sir.

17 MR. AUSBORN: Nothing further for this witness.

18 THE COURT: Cross.

19 CROSS-EXAMINATION

20 BY MRS. PENN:

21 Q. Mr. Edwards, my name is Carmella Penn, and I'm the  
22 prosecutor in this case.

23 Now, I understand that your testimony is you  
24 were in Union Springs on a daily basis?

25 A. Right.

1 Q. Every day?

2 A. Just about it. A few days I wasn't.

3 Q. A few days you weren't. So have you ever worked  
4 during the time these two individuals were dating?

5 A. No, sir.

6 Q. Never worked.

7 What did you do for a living?

8 A. (Witness shakes head.)

9 Q. Nothing.

10 How did you get money?

11 A. Disability.

12 Q. What's your disability?

13 A. Ma'am?

14 Q. What is your disability?

15 A. Like what? Money wise?

16 Q. You look fine to me. I want to know what's wrong  
17 with you.

18 A. Back. L4 and L5 lower part of my back.

19 Q. Have you ever resided, slept in any place besides  
20 Tallassee?

21 A. Slipped.

22 Q. Slept, went to sleep any place besides this place  
23 in Tallassee?

24 A. Yeah.

25 Q. Where?

1 A. 130 Montgomery Street.

2 Q. Where is that?

3 A. Union Springs.

4 Q. Whose residence is that?

5 A. Lynn Jones.

6 Q. Is Lynn Jones related to Donnie?

7 A. Yes.

8 Q. What relation?

9 A. Sister.

10 Q. How often do you say you stay over there?

11 A. All the time.

12 Q. When was the last time you spoke with Donnie?

13 A. Last Sunday.

14 Q. You say you never heard Callie say she wanted to  
15 break up with Donnie? You don't know nothing about  
16 that; is that correct?

17 A. Phrase that again.

18 Q. You don't know nothing about Callie wanting to  
19 break up with Donnie; is that correct?

20 A. Right.

21 Q. Never heard of that proposition at all?

22 A. No.

23 Q. Are you aware that he had been trespassed from her  
24 residence?

25 A. No.

1 Q. So you couldn't have been seeing them on a daily  
2 basis if you weren't aware of that?

3 A. Well, she said he was trespassed, but I used to  
4 take Donnie down there.

5 Q. Where did you take Donnie?

6 A. I took Donnie over to her daughter's house so he  
7 could take a bath, and she followed him home. And  
8 she got out of the car and let him in.

9 Q. She was staying at her daughter's house, wasn't  
10 she?

11 A. No.

12 Q. What was she doing over there?

13 A. I don't know; probably was visiting.

14 Q. She never lived at her daughter's house?

15 A. I don't know.

16 Q. You see them on a daily basis; you got to know  
17 where she was living?

18 A. She was living down there.

19 Q. Down there where she was living?

20 A. By Big Bear.

21 Q. She never lived anywhere else during this  
22 relationship?

23 A. No.

24 Q. Never lived anywhere else?

25 A. I don't know. She might have spent a night or two

1 with her daughter.

2 Q. But you talked to her and Donnie on a daily basis,  
3 did you not?

4 A. Just about every day. I see Donnie every day.

5 Q. I think you told us Donnie told Callie he didn't  
6 want Callie?

7 A. Yeah.

8 Q. Can you tell me when that was?

9 A. March 23rd.

10 Q. Of this year?

11 A. Last year, 2003.

12 Q. Where was Donnie when he told her that?

13 A. At his mama's house.

14 Q. You sure about that?

15 I want to know when you heard Donnie Williams  
16 tell Callie before I let you go -- what did she  
17 say, before I let you go. I'll do what?

18 A. Send him to prison get rid of him.

19 Q. When was that?

20 A. I don't have no regular date about that.

21 Q. You don't know that date, but you know March 23rd,  
22 2003?

23 A. Yeah, I know that date because it was the day  
24 before his mama's birthday.

25 Q. The day before his mama's birthday, that's why you



1 know that. And all of you were together at the  
2 same place?

3 A. Right.

4 Q. Where was that?

5 A. Lynn Jones' house at 130 Montgomery Street.

6 Q. And that's Donnie's sister; is that correct?

7 A. Sister and mother.

8 Q. And you know Donnie and seen him on a regular basis  
9 just about every day. What time period?

10 A. Just about everu -- all time period. Every time he  
11 had to go to work.

12 Q. Years that you saw him on a daily basis?

13 A. I don't know that now. I can't keep up with the  
14 years. I told you how many years I been knowing  
15 Donnie; six or seven years.

16 Q. So over the six or seven years you have known him,  
17 you have seen him on almost a daily basis?

18 A. Yes, ma'am. Because he come see his mother every  
19 day.

20 Q. Every day for the last six or seven years, you are  
21 telling us you seen Donnie on a daily basis?

22 A. Yes.

23 Q. Is that your answer?

24 A. Yes. I don't see him every day; most of them.

25 Q. Okay. If Donnie wanted to break it off with

1 Callie, why were you continually taking him over to  
2 her house, to her daughter's house? Why were you  
3 doing that if she hadn't broke it off?

4 A. Because she hadn't broke it off with him. During  
5 that time they were living together.

6 Q. And he said he wanted to break it off, and you were  
7 still taking him over there?

8 A. When I took him to Callie's house, Callie was over  
9 there, and Donnie didn't have no way to get in, and  
10 his clothes were at her house. And he asked  
11 Callie to and Callie followed her over there, and  
12 he took a bath and --

13 Q. I thought you were taking him back over there?

14 A. I did that some too.

15 Q. You said you would take him six or seven times,  
16 didn't you?

17 A. I did that some too.

18 Q. How is it that you expect the jury to believe that  
19 Donnie didn't want Callie, but you could take him  
20 over there to take a bath, put on his clothes, had  
21 an opportunity to get his clothes and wouldn't get  
22 them, and every time she put him out, she would  
23 take him right back?

24 A. He didn't have an opportunity to get them.

25 Q. How was it she stopped him from getting his

1 clothes?

2 A. She was going to come back the next day and get  
3 'em.

4 Q. I want to know how she stopped him from getting his  
5 clothes?

6 A. When he took them away, she would go right back the  
7 next day and get 'em.

8 Q. Mr. Edwards?

9 A. Yes.

10 Q. I'm sorry, but I find what you are saying hard to  
11 believe.

12 Is it the truth?

13 A. It's the truth.

14 Q. Everything you have said up here today is the  
15 truth?

16 A. Right.

17 Q. So if I brought somebody in here and they said  
18 something different, they would be lying, wouldn't  
19 they?

20 A. I don't know. I can't call an exact date on  
21 everything.

22 Q. I didn't ask you for any exact date but one. You  
23 gave me March 23rd, and I asked you for one more  
24 date. Is that not what I did?

25 A. You asked me for the year.

1 Q. You are not related to Ms. Callie, are you?

2 A. No.

3 Q. Would you say y'all are friends or whose friend  
4 would you have been? Donnie's?

5 A. Yeah. I talk to Callie.

6 Q. Would you call her your friend or is Donnie your  
7 friend?

8 A. No, I wouldn't call her my friend because that was  
9 Donnie's friend, but I can associate with her.

10 Q. Let me ask you this: Since you saw them just about  
11 every day for the last six or seven years, were you  
12 aware that he assaulted her daughter in 2001?

13 A. No.

14 MR. AUSBORN: Your Honor, I object to this.  
15 That is obviously a fact that's not been  
16 established and move to strike it.

17 THE COURT: He can answer that if he knows it.

18 Q. You are not aware of that?

19 A. No, sir.

20 Q. You are not aware if he has assaulted Ms. Callie,  
21 are you?

22 A. He never assaulted Ms. Callie.

23 Q. Are you aware if he has ever done anything to  
24 Ms. Callie Williams?

25 A. He ain't never done nothing to her.

1 Q. Are you aware of all of the nights that he would  
2 ride behind her after work?

3 A. How he going to ride behind her after work and he  
4 was working with her?

5 Q. So he continued to work with her all the way up  
6 through April 17th?

7 A. I can't answer that. I don't know when he quit  
8 work. I don't know the exact day.

9 Q. So what you are saying is if he worked with her,  
10 there is no way he could have followed her after  
11 work?

12 A. How he going to follow her when he take her home?

13 Q. So he took her home every night?

14 A. I ain't going to say every night. I wasn't there  
15 every night.

16 Q. Were you there any night?

17 A. No.

18 Q. Were you?

19 A. But I took them to work a lot of days.

20 Q. I understand. Just hold on for just a second.

21 Were you with Callie and Donnie Williams on  
22 March 25th when they were at work?

23 A. (Witness shakes head.)

24 Q. Did you see him pulling on her at work?

25 A. No.

1 Q. Can you say he didn't pull on her at work?

2 A. No, I can't say that. I wasn't at work.

3 Q. Were you there to see him following Ms. Callie on  
4 the 24th after she got off work?

5 A. No.

6 Q. You weren't even with them, were you?

7 A. No.

8 Q. Were you with them on March 30th when he went and  
9 got Narkesha off the front step of her house?

10 A. No. He told me about it. She wasn't at home and  
11 the baby was there on the step.

12 Q. Hold up.

13 A. Why you tell me to hold up? You ask me the  
14 question and --

15 MRS. PENN: Your Honor, ask for the witness to  
16 just answer the question.

17 THE COURT: You have to answer the question  
18 that's asked.

19 Q. Were you there on March 30th when David Donnie  
20 Williams took Narkesha from her front door?

21 A. No.

22 Q. Were you with Callie Williams?

23 A. No.

24 Q. Were you there on April 17th at the AG?

25 A. No.

1 Q. In fact, you don't know one thing about March 30th,  
2 March 25th or April 17th, do you? You don't know  
3 anything about this, do you?

4 A. I don't know nothing about that --

5 Q. That's a yes or no?

6 A. No.

7 Q. The only thing you are here to do is to come up  
8 here and try to help get him off; is that correct?

9 A. No. I came to tell the truth about what I know.

10 Q. You telling exactly what he told you to say; is  
11 that correct?

12 A. No.

13 Q. Did you get a letter like this right here saying  
14 this is what I want you to say?

15 A. No, I did not.

16 MR. AUSBORN: Your Honor, I obviously object.

17 MRS. PENN: I'm done, Your Honor. Nothing  
18 further for this witness.

19 THE COURT: Next witness.

20 (The witness left the witness stand.)

21 MR. AUSBORN: Lynn Jones.

22 LYNN JONES

23 having first been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. AUSBORN:

1 Q. May it please the Court.

2 State your full name for the Record.

3 A. Lynn M. Jones.

4 Q. Ms. Jones, I want you to lift your voice up and  
5 make sure the ladies and gentlemen of the jury,  
6 prosecution, and the defense can hear you testify.

7 A. Okay.

8 Q. That was Lynn Jones?

9 A. Lynn M. Jones.

10 Q. Okay.

11 Ms. Jones, do you know the alleged victim in  
12 the case, that being Ms. Callie Williams?

13 A. Yes.

14 Q. Are you related to her by blood or marriage?

15 A. No, neither.

16 Q. Do you know the alleged defendant in the case, that  
17 being Mr. David Donnie Williams?

18 A. Yes.

19 Q. Are you related to him by blood or marriage?

20 A. Yes, my brother.

21 Q. Now, did myself, Donnie or anybody connected with  
22 the defense threaten you, coerce you, intimidate  
23 you in order to get you to come here and testify  
24 today?

25 A. No.



1 Q. Is that no?

2 A. No.

3 Q. Did I, Donnie, or anybody connected with the  
4 defense promise you a reward, incentive or benefit  
5 in order to get you to testify today?

6 A. No.

7 Q. Even though as you have testified, my client, the  
8 defendant on trial is, in fact, your brother, would  
9 you take this stand and lie to help him?

10 A. No, I wouldn't lie to help him or to help her  
11 either.

12 Q. Are you here to tell the truth and nothing but the  
13 truth so help you God?

14 A. Yes.

15 Q. Do you have an ax to grind against Ms. Callie  
16 Williams?

17 A. No.

18 Q. Do you have a bone to pick with Ms. Callie  
19 Williams?

20 A. No.

21 Q. Do you have any animosity in your heart direct  
22 today for Callie Williams?

23 A. No.

24 Q. You know that in this case my client, your brother,  
25 is charged up under two indictments, one for

1 stalking on April 17th, 2004? And you do know  
2 that's one indictment; is that correct?

3 A. Correct.

4 Q. He is indicted for stalking.

5 You know that he is charged with stalking?

6 A. No.

7 Q. Do you know he is on trial for domestic violence,  
8 harassment? Did anybody tell you that?

9 A. No.

10 Q. What did you think he was on trial for? Did you  
11 think it was something connected with Ms. Callie  
12 Williams?

13 A. Yes.

14 Q. What did you think he was on trial for?

15 A. Because she is jealous --

16 MRS. PENN: Your Honor, first of all --

17 THE COURT: Sustained.

18 Q. Let me ask you this: Have you -- you know what  
19 stalking is?

20 A. Yes.

21 Q. To the best of your knowledge, information and  
22 belief, if they been dating over the last six or  
23 seven years --

24 A. Yes.

25 Q. -- on and off?

1 A. Yes.

2 Q. Have you ever seen David Donnie Williams stalk  
3 Ms. Callie Williams any time over the last six or  
4 seven years?

5 A. No.

6 Q. Do you know what domestic violence is?

7 A. Yes.

8 Q. Over the last six or seven years, have you ever  
9 seen Ms. Callie Williams with a black eye?

10 A. No, never.

11 Q. You ever seen her with a busted lip?

12 A. No.

13 Q. Swollen cheek bones?

14 A. Never.

15 Q. How often would you see Callie and David?

16 A. Every other day because they would come to my  
17 house.

18 Q. And would you from time to time go to their place?

19 A. Yes.

20 Q. Would y'all talk on the phone?

21 A. Yes.

22 Q. Were there times when Callie would confide in you  
23 like a friend, ask your advice on stuff and share  
24 secrets with you, confidences or something like  
25 that?

1 A. No.

2 Q. Was she close to you?

3 A. No.

4 Q. Now, what's your mother's name?

5 A. Carrie Odessa Williams.

6 Q. Now, what's her date of birth?

7 A. March 23rd, 1929.

8 Q. Now, have you ever heard Callie tell Donnie in your  
9 presence, Donnie, I don't want you, get out of my  
10 life? Have you ever heard her say that to Donnie?

11 A. Yes.

12 Q. She's told Donnie that?

13 A. Donnie told her that.

14 Q. Let me get this clarified. Donnie has told her  
15 that?

16 A. Yes.

17 Q. Have you ever heard her tell Donnie that?

18 A. She would tell him she didn't want him and he would  
19 tell her he didn't want her, and she would say I  
20 don't want you either.

21 Q. So it was a flip-flop relationship. One minute she  
22 don't want him and they get back together?

23 A. Yes.

24 Q. And one minute he don't want her and they get back  
25 together?

1 A. Yes.

2 Q. It's been on and off for the last six or seven  
3 years?

4 A. Yes.

5 Q. Linda Caldwell, does that name ring a bell?

6 A. Yes.

7 Q. In relation to Donnie, what is Linda Caldwell's  
8 relationship to Donnie?

9 A. Girlfriend.

10 Q. His girlfriend.

11 Does she have any children by him?

12 A. Yes.

13 Q. This year, do you recall Donnie telling you or  
14 telling Callie in your company that he no longer  
15 wanted this relationship, that he wanted to go back  
16 to Linda?

17 A. Yes.

18 Q. What month was that?

19 A. That was March at my mother's birthday party, the  
20 23rd.

21 Q. March the 23rd?

22 A. Yes.

23 Q. Where did this take place at?

24 A. At my home.

25 Q. State that address for the Record.

1 A. 1308 Montgomery Street, Union Springs, Alabama  
2 36089.

3 Q. Did she get upset?

4 A. Yes, she did, very upset.

5 Q. Did she start crying?

6 A. Yes.

7 Q. Did she try to beg, plead with him not to do that;  
8 stay with me?

9 A. Yes.

10 Q. What did she say?

11 A. She said if he didn't that she would --

12 MRS. PENN: Your Honor, I object to hearsay.

13 MR. AUSBORN: It is not hearsay, she is here.

14 THE COURT: It is not an exception to the  
15 hearsay rule. Rephrase the question.

16 Q. Did you hear her make any threats to Donnie?

17 A. Yes.

18 Q. What did she say?

19 MRS. PENN: Object, Your Honor.

20 MR. AUSBORN: Your Honor, this is a probative  
21 line of questioning. It establishes motivation  
22 behind why we are here.

23 THE COURT: You are asking about something that  
24 Ms. Callie Williams said? Is it a statement  
25 against her interest? Is she a principle or party

1 in the case?

2 I'll allow it. That was the hint.

3 MR. AUSBORN: Thank you so much.

4 Q. Tell us what she said.

5 A. She said, hell, before I let you have somebody  
6 else, I'll put your damn ass in jail. I have --

7 Q. Before I let you have anybody else, I'll put your  
8 damn ass in jail?

9 A. That's what she said.

10 Q. Was she laughing when she said that?

11 A. No, she was mad. She meant just what she said.

12 Q. Did she say it in a low tone or did she scream it  
13 at him?

14 A. She screamed it at him.

15 Q. Was she crying when she said that?

16 A. Yes. She was mad.

17 Q. Now, were there times when they would break up?

18 Has there ever been a time when you would take  
19 Donnie's belongings and take them back over to her  
20 house when he would move back in?

21 A. Yes, a lot of times.

22 Q. A lot of times?

23 A. Yes, and she would come back and get them.

24 Q. There have been times when she has come back and  
25 gotten his stuff?

1 A. Yes.

2 Q. Did she ever tell you, I don't want no Donnie; make  
3 him leave me alone? Has she ever told you that?

4 A. No.

5 Q. But you have heard him say I don't want you?

6 A. Yes. He would come to my house and try to hide  
7 from her, and she would come looking for him and  
8 calling over to my house for him.

9 Q. Okay. Crazy in love. Is that what it sound like  
10 to you?

11 A. Yes.

12 Q. You ever heard her introduce Donnie as my husband?

13 A. Yes, plenty times.

14 Q. Plenty of times?

15 A. Yes.

16 Q. You ever heard her say that Donnie was like a  
17 father, recognized father of her children, two  
18 small children?

19 A. Yes. Yes.

20 MRS. PENN: I object. He has been leading the  
21 witness for quite some time. I've been trying to  
22 let it go, but...

23 MR. AUSBORN: Okay. I'll back that out.

24 Q. Did you ever see the eight-year-old daughter with  
25 bruises on her person?



1 A. No.

2 Q. Did you ever see the 14-year-old son with bruises  
3 on his person?

4 A. No.

5 Q. The 21-year-old daughter, Lakeisha, have you ever  
6 seen her with bruises on her person?

7 A. No.

8 Q. Ever been to her place, Lakeisha?

9 A. No.

10 Q. You ever talk with her?

11 A. Yes.

12 Q. Has she ever mentioned to you that Donnie had been  
13 beating up on her?

14 A. No, never.

15 Q. That Donnie had been beating up on her mama?

16 A. No.

17 Q. Beating up on her little brother?

18 A. No.

19 Q. Beating up on her little sister?

20 A. No.

21 MR. AUSBORN: Nothing further for this witness,  
22 Your Honor.

23 THE COURT: Cross.

24 CROSS-EXAMINATION

25 BY MRS. PENN:

1 Q. Are you hear to tell me that you have never heard  
2 that Donnie assaulted Lakeisha Williams in February  
3 of 2001?

4 A. Yes, I have.

5 Q. Never heard anything about that?

6 A. No.

7 Q. Never saw any bruises on Lakeisha?

8 A. Never.

9 Q. If you never saw them, does that mean they didn't  
10 exist?

11 A. I don't know if they existed or not, but I never  
12 seen them.

13 Q. But it is your testimony today that Donnie has  
14 never touched Lakeisha Williams?

15 A. Right.

16 Q. You don't need any money to come in here and  
17 testify for your brother, do you?

18 A. No.

19 Q. You do it just because he's your brother; ain't  
20 that right?

21 A. I'd do it for Callie, and I'd do it for him.

22 Q. You do it for Callie?

23 A. Yes; anything if it's right.

24 Q. Tell us about the times she had to call you to get  
25 Donnie away from her apartment.

1 A. She never called me.

2 Q. She never called you and said she didn't want  
3 Donnie, to come get him?

4 A. No.

5 Q. But Donnie has told you that?

6 A. Yes.

7 Q. Let's talk about this March 23rd date. You were at  
8 your house for your mama's birthday?

9 A. Right.

10 Q. Donnie was there?

11 A. Yes. Callie was there also.

12 Q. And Callie was there and he told Callie in front of  
13 you he didn't want her?

14 A. They were discussing that in front of all of us.

15 Q. And that was March 23rd, 2003?

16 A. Right.

17 MRS. PENN: I don't have any more questions for  
18 this witness, Judge.

19 MR. AUSBORN: Your Honor, at this time I would  
20 like to call the last witness as a rebuttal  
21 witness. That would be Ms. Callie Williams.

22 CALLIE WILLIAMS

23 having previously been sworn, retook the stand

24 and continued to testify as follows:

25 RECROSS-EXAMINATION

1 BY MR. AUSBORN:

2 Q. Ms. Callie, you testified at length yesterday; is  
3 that correct?

4 A. Yes.

5 Q. Is it your contention that everything that came  
6 forth out of your mouth from that witness stand on  
7 yesterday was the truth?

8 A. Yes, it was.

9 Q. And nothing but the truth, so help you God; is that  
10 your contention?

11 A. It was.

12 Q. You stated up under oath that Donnie Williams had  
13 beat your children. Isn't that what you said?

14 A. I told you my 21-year-old daughter. That's what I  
15 said.

16 Q. Has Donnie ever beat your 14-year-old boy?

17 A. I didn't tell you that. No, he haven't.

18 Q. Has Donnie ever beat your eight-year-old daughter?

19 A. No, he haven't.

20 Q. You said that Donnie beat you frequently?

21 A. Yes, he did, behind close door.

22 Q. Behind closed doors.

23 Your eight-year-old daughter and 14-year-old  
24 son, they've always stayed with you since they have  
25 been birthed into this world; is that not correct?

1 A. Yes, they have.

2 Q. You have never surrendered temporary custody over  
3 to another person, have you?

4 A. No, I haven't.

5 Q. You say you suffered a black eye when Donnie beat  
6 you?

7 A. Yes, I did. Back in 1998 he had me off my job for  
8 four days.

9 Q. And you said you suffered a busted lip?

10 A. Yes, I did.

11 Q. And you said you had bruises on your cheeks?

12 A. I did.

13 Q. Your eight-year-old daughter, she's honest?

14 A. My kids was afraid when they got up here on this  
15 stand. That's why they did what they did. They  
16 was afraid and they was frightened and scared.

17 Q. Don't get ahead of me.

18 My question to you: Your eight-year-old  
19 daughter, is she an honest child?

20 A. Yes, in certain things; yes, she is.

21 Q. Okay. You were right here when your daughter took  
22 the stand after being sworn in by this court; is  
23 that correct?

24 A. Yes, I was.

25 Q. Did she lie up under oath?

1 A. Well, she did lie about some things; about she  
2 didn't see him beat me up.

3 They was afraid and scared the way you were  
4 asking them the questions. They didn't understand  
5 the question. They really didn't.

6 And I didn't like the way you were asking the  
7 questions to my kids. You know they are young and  
8 they don't understand the life of an adult. They  
9 don't understand a life like that.

10 Q. I'm going to test you on it.

11 You heard me ask your daughter several times  
12 the line of questions have you ever seen your  
13 mother with a black eye. What did she say?

14 A. She said, no. But she can't remember back then.

15 Q. Hold on. Stop right there.

16 You heard me ask her have you ever seen your  
17 mother with a busted lip. What did she say?

18 A. She said, no.

19 Q. You heard me ask her have you ever seen your mother  
20 with bruised cheeks. What did she say?

21 A. She said, no. She wasn't nothing but three years  
22 old when that happened.

23 Q. You heard me ask her have you ever seen David  
24 Donnie Williams lay a hand on her mother. What did  
25 she say?

1 A. She said, no.

2 Q. You heard me ask her has Donnie Williams ever laid  
3 a hand on her. What did she say?

4 A. She said, no.

5 Q. You heard me ask your son has he ever seen mama  
6 with a busted lip. What did he say?

7 A. He said, no.

8 Q. You heard me ask him have you ever seen mama with a  
9 black eye. What did he say?

10 A. He said, no.

11 Q. You heard me ask him have you ever seen mama with  
12 swollen cheeks. What did he say?

13 A. He said, no.

14 Q. You heard me ask him did David Donnie Williams ever  
15 lay a hand on him. And what did he say?

16 A. He said, no. And he told the truth about that.

17 Q. You heard me ask him had he ever seen David Donnie  
18 Williams touch you?

19 A. Say that question again.

20 Q. You heard me ask him had he ever seen David Donnie  
21 Williams ever lay a hand on you. And what did he  
22 say?

23 A. He said, no.

24 Q. Now, this is the same child that you testified to  
25 up under oath on March 30th -- you contend that

1 Donnie Williams made a threat, I'll fuck you up?

2 A. It was the 17th. And he did say that. Yes, he  
3 did.

4 Q. That don't add up.

5 A. Yes, he said that. Why am I going to get up here  
6 and tell a lie on my child? Everything he say, he  
7 did.

8 THE COURT: Hold on, Ms. Williams.

9 Q. Now, your daughter, she said she saw you with black  
10 eyes, busted lips and bruises and all of this other  
11 stuff; is that right? You heard her say that?

12 A. Yes, she did.

13 Q. She said she suffered some of the same injuries.  
14 You heard her say that?

15 A. She did.

16 Q. I say you get the Oscar for best actress, and she  
17 gets best support.

18 MRS. PENN: Object.

19 THE COURT: Sustained.

20 A. My 21-year-old daughter doesn't have no reason to  
21 lie. She told the truth and nothing but the truth.

22 David Donnie William is the one lying.

23 Q. I asked you up under oath, show me one photograph  
24 showing injuries. What did you say?

25 A. I told you at the time you wouldn't let me go get



1 no photos. He wouldn't let me out the house.

2 Q. Let me ask you: You don't have any, do you?

3 A. No, I don't, but he did it.

4 Q. And your daughter doesn't have any either, do she?

5 A. No, she don't.

6 Q. I asked you for one medical record. What did you  
7 say? You didn't have any, did you?

8 A. No, I didn't.

9 Q. And I asked your daughter. She didn't have any,  
10 did she?

11 A. No, she didn't.

12 Q. I ask you for one conviction showing that you  
13 prosecuted David Donnie Williams successfully for  
14 assault. You did haven't any, did you?

15 A. No.

16 Q. I asked her the same thing. She didn't have any  
17 either, did she?

18 A. No.

19 Q. I asked you to produce an application for petition  
20 for protection order against this violent man who  
21 has been --

22 A. No.

23 Q. I asked her the same thing, to produce a protection  
24 from abuse for this violent man who has been  
25 assaulting her over the last six or seven years.

1                   She didn't produce one either, did she?

2       A.     No.

3       Q.     We are getting somewhere now.

4                   You were crazy in love for this man right here?

5       A.     At first I was.

6       Q.     And you still are?

7       A.     No, I'm not. I guarantee you that.

8       Q.     I'll test you on that.

9                   You met him in 1997?

10      A.     Yes, I did.

11      Q.     Crazy in love for him in 1997?

12      A.     We didn't get together right off. We started  
13              talking at first as friends.

14      Q.     Let's -- A little love for him in 1997?

15      A.     Yes.

16      Q.     Not at the crazy stage then? Crazy in love in  
17              1998?

18      A.     We were getting there, yes.

19      Q.     Crazy in love in 1999?

20      A.     We got in engaged in 1998.

21      Q.     Crazy in love in 2000?

22      A.     We were breaking up the relationship then.

23      Q.     Crazy in love in 2002?

24      A.     She was locked up.

25      Q.     Crazy in love in 2003?

1 A. He was locked up.

2 Q. All right. I'll come back to that.

3 You got the same last name as David Donnie  
4 Williams, don't you?

5 A. Yes. But we never been married.

6 Q. Never been married. You wanted to be?

7 A. That was then.

8 Q. So you wanted --

9 A. I broke the relationship off.

10 He was rushing me in to it, but I told him I  
11 wasn't ready for that.

12 Q. Stay right there.

13 What year did you break the engagement off?

14 A. Back as I can remember, the year 2001, when he  
15 first got locked up.

16 Q. 2001. And I want you to just stay with my  
17 questions. I don't want you to volunteer no  
18 information other than to the question I asked you.

19 After 2001, did you get back engaged with David  
20 Donnie Williams?

21 A. Yes. Yes, I did.

22 Q. What year was that?

23 A. I can't remember what year.

24 Q. Now, you have come before this Court and testified  
25 under oath that you couldn't get away from David

1 Donnie Williams. Is that your testimony?

2 A. I did get away from him. He wouldn't leave me  
3 alone. He kept following and harassing me.

4 Q. So at what point did you make up your mind, David,  
5 I don't want you no more and you had just  
6 completely cut him off and didn't want no more to  
7 do with him?

8 A. I broke it off completely March of this year at my  
9 house.

10 Q. March of this year?

11 A. Yes. And he didn't want to agree to that.

12 Q. Now, you heard my witnesses come forth?

13 A. He lied. He lied because Donnie told him what to  
14 say.

15 Q. You know Robert, don't you, a little bit?

16 A. I don't know too much about him.

17 Q. You know Robert has been by the house?

18 A. Yes, a couple of times with Donnie.

19 Q. And you know you have been by Donnie's mama's house  
20 and Robert has been there?

21 A. We ain't never met at Donnie's mama house. That  
22 was at his sister Lynn's house. He lied.

23 Q. You heard him say, I took them to work some?

24 A. That was every now and then. My daughter took me  
25 to work.

1 Q. And you heard Robert say, I've taken Donnie's  
2 belongings and moved them out of her house and  
3 moved them back into her house?

4 A. Because Donnie told him to bring them back. That's  
5 why he brought them back.

6 Q. And did you stand in the door and say, wait a  
7 minute, Robert, you can't move that stuff back in  
8 here?

9 A. Because some of the times I was at work.

10 Q. Let me ask you this: When you was at work, who let  
11 him in?

12 A. At a certain time, he had a key to my house; at a  
13 certain time. And I took the key from him.

14 Q. In 2001, my recollection is that is the last year  
15 he had a key to your place?

16 A. Sure had.

17 Q. After 2001 he no longer had a key?

18 A. No.

19 Q. But you have been back and forth from 2001 up to  
20 spring of this year; is that right?

21 A. Yes.

22 Q. He has moved his stuff in and out since 2001 all  
23 the way up to spring of this year?

24 A. I tell him not to bring it back, and I look, and he  
25 has brought it back to my house.

1 Q. And then you get a little weak in the knees, don't  
2 you?

3 A. No, I don't.

4 Q. When you see David?

5 A. No, I don't. But I am afraid of him. That man has  
6 threatened my life several times.

7 Q. What you are afraid of is David going forward and  
8 living his life without you?

9 A. He can go ahead on. If he had went ahead and left  
10 me alone, wouldn't no warrants been signed against  
11 him. He wouldn't leave me alone.

12 Q. You feel less than a woman without that man right  
13 there?

14 A. I'm a full woman.

15 Q. In fact, you introduced him as your husband?

16 A. No, I did not. I said boyfriend. His sister and  
17 boyfriend said that they told him to say that.

18 Q. You and Donnie had pet games; you would say stuff  
19 like my husband and he'd say my wife?

20 A. I have never said that. I said boyfriend. He  
21 called me his wife. He have told several people  
22 his wife.

23 Q. Have you ever told people your husband?

24 A. I ain't never told Donnie that.

25 Q. You sure. You are under oath now?

1 A. I ain't never told Donnie that.

2 Q. Never in your life?

3 A. No, I haven't.

4 Q. You ever sent Donnie letters, cards?

5 A. Every now and then. He told me to buy a card with  
6 wife wrote on it.

7 Q. Stay right there.

8 Now, you recognize Donnie has been like a  
9 father of your two kids, little small ones. He was  
10 like daddy in their life; isn't that right?

11 A. No, he wasn't.

12 Q. You sure about that?

13 A. He wasn't doing nothing for my kids. He wasn't  
14 doing nothing for his own.

15 Q. Okay. All right. I'll come back to it.

16 You testified up under examination yesterday  
17 that sex was bad with this man. Isn't that what  
18 you said?

19 A. At times it was. Because he was on that crack so  
20 bad.

21 Q. You testified that this man was a crack addict?

22 A. He was.

23 Q. You testified that this man was just financially  
24 irresponsible.

25 He ain't paid one dime towards your well being.

1           Isn't that what you are saying?

2       A.    He didn't. He have not.

3       Q.    You testified that you no longer loved this man and  
4           you just wanted him to leave you alone?

5       A.    Yes, I did.

6       Q.    Now, I'm going to take you back. I'm going to give  
7           you an opportunity right now to take back anything  
8           that you said to me moments ago that you testified  
9           to.

10           Have you lied up under oath at any time?

11      A.    What are you talking about?

12      Q.    I asked you have you ever mentioned to Donnie that  
13           he was your husband?

14      A.    Didn't I told you he forced me to say that.

15           He really did force me to say it.

16      Q.    And have you ever mentioned to Donnie that you was  
17           his wife?

18      A.    Did I tell Donnie that?

19      Q.    Yes.

20      A.    No, I didn't.

21      Q.    You sure about that?

22      A.    He told me I was his wife.

23      Q.    Okay.

24           You need time to confer with your counsel  
25           before I come at you on this?



1 A. I don't need no counsel. David Donnie Williams  
2 need one.

3 Q. You sure?

4 A. I'm fine.

5 Q. Okay. I'll test you on this. Now, you sent Donnie  
6 pictures, didn't you?

7 A. Because he asked me to send them. He begged me to  
8 send them.

9 Q. Stay right there. Stay right there. Don't move.

10 When you sent Donnie pictures, did Donnie have  
11 a gun to your head and say, send me a picture?

12 A. No, he didn't.

13 Q. Did he have a knife to your throat and say, send me  
14 a picture?

15 A. No, he didn't.

16 Q. Did Donnie say to you, you better say I'm your  
17 husband?

18 A. No he didn't.

19 Q. Did he say to you, you better say you're my wife?  
20 Did he say that?

21 A. He didn't tell me that.

22 Q. Now, I asked you earlier have you ever said to  
23 Donnie that he was your husband. And you said, no,  
24 I never --

25 A. He told me to put that on them pictures and stuff.

1 I know what Donnie told me.

2 I have letters at home of everything he wrote  
3 me if you give me a chance to go get them.

4 Q. I'm going to ask you to take a look at these  
5 pictures right here?

6 A. Yes, that's what he told me to write on the back of  
7 them.

8 Q. Stay right there. I'm going to ask you a question.

9 A. Yes, that's what he told me to write on the back of  
10 them.

11 Q. Who is that a picture of?

12 A. Me.

13 Q. That's a picture of you?

14 A. Yes.

15 Q. I'm going to label them one by one.

16 I'm going to label these as Defendant's  
17 Composite Exhibit Number 5. Pretty picture I may  
18 add. You look good.

19 Read the back of that picture for me into the  
20 Record slowly and loudly.

21 A. To my husband, David Williams.

22 Q. Stay right there. Slow down.

23 A. To my husband David Williams from your wife Callie  
24 Williams.

25 Q. You wrote that?

1 A. Yeah, I wrote that because he told me to write that  
2 on the back of them when I sent them.

3 Q. That looks good. And that's a picture of you?

4 A. Yes.

5 Q. That's your handwriting?

6 A. Yes, that's my handwriting.

7 Q. Now, here's another pretty picture of you.

8 That looks good. Look at the back of that one.  
9 Read the back of that one into the Record.

10 A. To my husband David Williams from your wife Callie  
11 Williams.

12 Q. That's a different picture from that one right  
13 there, the first one, isn't it?

14 A. Yes. All of them was sent to him at the same time.

15 Q. All right. Stay right there. That's your  
16 handwriting and photograph right there; is that  
17 correct?

18 A. Yes.

19 Q. Here is another pretty picture of you.

20 That looks good. Take a look at that one.  
21 Read that one into the Record.

22 A. To my husband David Williams from your wife Callie  
23 Williams.

24 Q. Okay. Now, that's a picture of you and that's your  
25 handwriting; is that right?

1 A. Yes.

2 Q. In all of those pictures, that's you smiling real  
3 good, aren't you? Isn't that you smiling? Looks  
4 like you are proud to be sending these to your  
5 husband?

6 A. Not really.

7 Q. A picture is worth a thousand words.

8 You don't have an angry face like, hum, don't  
9 make me write this. You don't have an angry face?

10 A. I'm supposed to smile in a picture. I'm not  
11 supposed to look sad.

12 Q. Neither one of those pictures look like a victim  
13 whose been violently assaulted over the last six or  
14 seven years?

15 A. No. Because he was locked up when I took those.

16 Q. Well, let me ask you this right here: You got a  
17 black eye here?

18 A. No. Because I took them when he was locked up.

19 Q. Okay. Stay right here.

20 Here is another one of you right here. Read  
21 the back of that one into the record?

22 A. To my husband David Williams from your wife Callie  
23 Williams.

24 Q. That's you?

25 A. Yes.

1 Q. That's your handwriting?

2 A. Yes.

3 Q. Are you smiling on that one?

4 A. Yes.

5 Q. Felt good to be sending your husband that doesn't  
6 it? Am I right about that?

7 MR. AUSBORN: Permission to publish, Your Honor.

8 Q. Now, take a look at that picture.

9 Tell me who that is a picture of right there.

10 A. This was my 14-year-old son. At the time I think  
11 he was 12 when he took this picture.

12 Q. All right. He's smiling too, isn't he?

13 A. Yes.

14 Q. Take a look at that picture and tell me who that  
15 is.

16 A. This is my eight-year-old daughter. I think she  
17 was about six when she took this.

18 Q. She's smiling too. One big happy family all these  
19 pictures sent to husband, isn't it?

20 A. Those pictures were taken when he was locked up.  
21 Wasn't no picture taken. He was locked up.

22 THE COURT: Exhibit 5 is a composite of those  
23 six photos?

24 MR. AUSBORN: Yes.

25 THE COURT: Any objection?

1 MRS. PENN: No.

2 THE COURT: Admitted without objection.

3 (Defendant's Exhibit No. 5 was marked for  
4 identification, offered and received into  
5 evidence.)

6 Q. Now, this is a good one.

7 Now, you never sent Donnie cards?

8 A. Every now and then, not that regular.

9 Q. I want to show you the first one. I'm going to  
10 label the cards as being Defendant's Composite  
11 Exhibit 6, all of them six.

12 I'm going to ask you to take a look at this  
13 card right here and tell me if that's a card you  
14 sent to Donnie.

15 MR. AUSBORN: If she would stipulate to these  
16 cards I can save some time.

17 THE COURT: Let her look through them. How  
18 many of them are there?

19 MR. AUSBORN: Six cards, Your Honor.

20 THE COURT: Look through them, Ms. Williams,  
21 and see if you can identify them all.

22 THE WITNESS: Yes.

23 THE COURT: As to the six cards, can you  
24 identify them all?

25 THE WITNESS: Yes. I sent them to him. That's

1 my signature on the inside.

2 THE COURT: Any objection to Composite 6?

3 MRS. PENN: No.

4 THE COURT: All of these cards are cards you  
5 sent to David Donnie Williams?

6 THE WITNESS: Yes.

7 THE COURT: Admitted.

8 (Defendant's Exhibit No. 6 was marked for  
9 identification, offered and received into  
10 evidence.)

11 MR. AUSBORN: Now, without benefit of going  
12 directly to the specifics of every one of them, you  
13 sent them? And the jury will take a look at this.  
14 You sent him a card, Happy Father's Day, am I  
15 right? You sent him another one for the special  
16 man in my life. The moments we share are special  
17 because of the love. That's yours too, isn't that  
18 right?

19 A. Yes.

20 Q. This is my favorite here. For my sweetheart, happy  
21 birthday; my love always. That's you?

22 A. Yes.

23 Q. This is another one of my favorites. For a loving  
24 husband at Christmas.

25 That's another one of yours; is that right?

1 A. Yes.

2 Q. And this is another one, to my loving husband on  
3 Valentine's Day; is that right?

4 A. Yes.

5 Q. Now, this is my granddaddy favorite of all. I  
6 saved my best for last. For my husband with love  
7 at Christmas. Your love is the greatest gift of  
8 all. You sent him that one?

9 A. Yes. That's when we was engaged. That's why I  
10 sent them kind of cards. We was engaged.

11 Q. When did you break the engagement off?

12 A. I broke it off in 2001. And we gotten engaged  
13 again when he was locked up.

14 Q. When did you break that engagement up?

15 A. The who?

16 Q. The last engagement got broken off when?

17 A. 2004 of this year.

18 Q. 2004.

19 MR. AUSBORN: Permission to publish, Your  
20 Honor.

21 Q. Now, this is what I don't understand. And you can  
22 help us out, if you got a man who has violently  
23 abused you over the last six or seven years, is it  
24 smart, rational, reasonable and prudent for you to  
25 engage yourself to this man to be wed?



1 A. I had told you we broke off and got back engaged  
2 again. You don't understand what I'm saying.

3 Q. Stay right there.

4 You say he beat you up all the way from the  
5 point you got together all the way up to 2004?

6 A. I didn't say beat me for no seven years. I didn't  
7 say that.

8 Q. Did he beat you six out of the seven years?

9 A. I can't remember how many times it was. He was  
10 locked up some. I ain't going to lie about that.

11 Q. Was it 5, 4, 3, 2?

12 A. I can't remember.

13 Q. Two? Your daughter remembered real well. She said  
14 you been beaten up, a victim of domestic violence  
15 over the last six or seven years. Her memory  
16 didn't suffer from amnesia.

17 Was her memory better than yours?

18 A. I didn't say that.

19 Q. Was she lying when she testified?

20 A. She wasn't lying. She told the truth.

21 Q. She said you got beat up for the last six or seven  
22 years?

23 A. I don't remember her saying no six or seven.

24 Q. Now, you sent some of these cards this year; this  
25 year 2004?

1 A. Donnie got out on January 15th.

2 Q. My question to you is this --

3 A. I didn't send him no card this year.

4 Q. Stay right there.

5 You are saying you didn't send nothing in 2004?

6 A. No, I haven't.

7 Q. Now, does it make sense.

8 This is the man you testified to up under oath  
9 won't leave me alone, won't get out of my life and  
10 stay out of my life, that you'd send him memoirs of  
11 affection like I have over here?

12 A. I told you we was engaged at the time. That's why  
13 I sent that.

14 Q. Now, let me ask you this: Show me one card that  
15 Donnie sent to you.

16 A. Mine's is at the house. I can't go get them right  
17 now. I got several cards, lot of cards and letters  
18 too where he threatened me on. I have several to  
19 show.

20 Q. You ever heard of the phrase money is in the bank,  
21 check's in the mail.

22 That's what you are trying to say now. You got  
23 the goods but --

24 A. It at home. I got every letter he have ever wrote  
25 me since he been locked up and the cards too. But

1 I can't go get them right now.

2 Q. Let me ask you this: You developed a history with  
3 this man you'd love to forget; isn't that right?

4 A. Rephrase that. Say that again.

5 Q. Let me ask you this right here.

6 Didn't you say that this man was a crack  
7 addict, been a crack addict over the last six or  
8 seven years?

9 A. He have. But the year he was locked up, he wasn't.

10 Q. Didn't you say that this man's beat you up for all  
11 of these years?

12 A. I didn't say for no seven years.

13 Q. Didn't your daughter say he has beaten you up all  
14 these years?

15 A. I don't remember her saying that. She said several  
16 times. I don't remember her saying that.

17 Q. Didn't you say this man was a dead beet that didn't  
18 help you out?

19 A. He wasn't helping me. His money went to crack.

20 Q. Didn't you say that that man was giving you bad  
21 sex?

22 A. At the time he was on the crack, he was.

23 MRS. PENN: Asked and answered, Judge. If he  
24 has something new.

25 Q. He must have been doing something right for you to

1 glorify and gratify him with these here?

2 A. I keep telling you we was engaged at the time.

3 Q. When people are dedicating themselves -- Have you  
4 ever been married before?

5 A. No, I haven't.

6 Q. When people are dedicating themselves to a person  
7 by way of engagement, I consider themselves to be a  
8 couple?

9 MRS. PENN: Objection, Your Honor. Tell a  
10 story. Ask a question.

11 Q. When you got engaged to him, was it your  
12 intention -- What was your intention? To spend  
13 your life with him?

14 A. At first I didn't know about his past when we got  
15 engaged in '98. I didn't know about his past. We  
16 got engaged on Mother's Day.

17 Q. Stay right there. You -- you -- These cards don't  
18 lie. When you went to the store, did you look  
19 through the rack of cards?

20 A. I read my cards before I buy them.

21 Q. And when you selected these cards, David didn't  
22 tell you pick that one?

23 A. No, he didn't. He told me to get some with wife on  
24 it or husband on it. I know what he told me.

25 Q. Stay right there.

1           You and you alone made the decision about  
2       choosing the card with the inscriptions; is that  
3       right?

4       A.    I read the inside on it, yes.

5       Q.    And when you selected these cards, you wanted to  
6       encompass a message that spoke personally about  
7       your sentiments towards that man right there; isn't  
8       that right?

9       A.    Rephrase that again. Say that again.

10      Q.    These cards indicated what you felt about that man  
11      right there; isn't that right?

12      A.    I told you we was engaged at the time.

13      Q.    Now, let me ask you this right here. Show me one  
14      card because I didn't run across one card.

15           Show me one card, one letter, one memoir,  
16      anything that you sent to that man saying that you  
17      didn't want him to have nothing else to do with  
18      you?

19      A.    We was engaged at the time. Most of the time he  
20      was locked up. I'm telling you we was engaged.

21      Q.    It's all good, isn't it?

22      A.    At the time. That ain't got nothing to do with  
23      these cases, stalking and harassment. That ain't  
24      got nothing to do with this.

25      Q.    Now, Callie, I want you to look right over here to

1           these ladies and gentlemen of the jury. They have  
2           been very patient over the last two days.

3           You tell them -- You telling them you weren't  
4           crazy in love with that man right there?

5       A.    I told you certain times we was engaged.

6       Q.    And you heard Lynn testify. Am I right about that?

7       A.    She lied.

8       Q.    You heard Robert testify?

9       A.    He lied.

10      Q.    You heard them say that you said to David, you  
11           ain't getting out of my life. If I can't have you,  
12           ain't nobody going to have you. I'm going to send  
13           you to prison?

14      A.    They lied. You know why they lied?

15      Q.    That's exactly what you said, didn't you?

16      A.    I didn't tell them that because on March 23, 2003,  
17           Donnie was locked up. They lied. That's why I  
18           know they lied.

19      Q.    Let me ask you this right here: March 23rd, that's  
20           his mama's birthday; you know that?

21      A.    I was living at my daughter's house. I broke up  
22           with Donnie on March 19th.

23           They lied about that too.

24      Q.    Now, it's something strange that on the day that  
25           his family indicated that he broke it off with you,

1 one day later, the 24th --

2 MRS. PENN: Your Honor, I object.

3 THE COURT: Sustained.

4 Q. Now, Callie, you still got love for that man right  
5 there?

6 A. No, I don't. It is over, final.

7 Q. Sure?

8 A. Yes. And I have told him that on April 17th down  
9 to the grocery store and on March 25th on my job.

10 Q. Now, Callie, over the last six or seven years when  
11 you marched that man's possessions out your place,  
12 every time you did that, you told him it's over,  
13 didn't you?

14 A. Yes. And he kept coming back knocking on my door.  
15 If you don't let him in, he'll break in. I told  
16 you, he have no key to my house a lot of time.

17 Q. Knocking on your door and there you are, knock  
18 knock, knock, welcoming him straight back with open  
19 arms?

20 A. Didn't I tell you open the door or he would break  
21 in? Yeah, I've did it several times.

22 I don't have to lie. And he know I'm telling  
23 the truth. You don't know nothing about him. You  
24 really don't.

25 Q. I don't?

1 A. You search his records in the past. You will see  
2 what type of person he is.

3 Q. Stay right there. I don't want you to volunteer any  
4 information in this courtroom. I just want you to  
5 answer my questions.

6 A. I don't like the way you talk to me and keep asking  
7 me the same questions over and over. And I have  
8 answered your questions. I don't like the way you  
9 are talking to me.

10 Q. You swore out two warrants and affidavits against  
11 my client, didn't you?

12 A. What did you say?

13 Q. You swore out two affidavits and warrants against  
14 my client, didn't you?

15 A. Stop him from harassing me.

16 Q. And on behalf of the State of Alabama, he got  
17 indicted on those two offenses, didn't he?

18 A. I know he did. I don't have to get on that stand  
19 and lie.

20 Q. And I say to you, as long as that young man's guilt  
21 or innocence is before this Court, you will answer  
22 my questions.

23 A. I don't like the way you are talking to me. I just  
24 don't really like that.

25 MR. AUSBORN: Nothing further for her.



1 THE COURT: Do you have anything?

2 MRS. PENN: I do.

3 THE COURT: Y'all take a short break.

4 (Whereupon the jury left the courtroom, and the  
5 following Bench conference was held outside  
6 the hearing of the jury:)

7 MR. AUSBORN: Your Honor, unless the State and  
8 defense can reach some kind of stipulation as to  
9 how many of these come in, but this is coming to a  
10 point where it is becoming cumulative evidence.

11 THE COURT: I don't know why you would offer  
12 any more than one which rebuts the position that  
13 you are trying to rebut, which means this letter  
14 and picture are clear.

15 I think to do a lot more than that would be  
16 cumulative. I suggest pick a couple and put them  
17 in, and I think that gets your point there in a big  
18 way.

19 MR. AUSBORN: That one is okay, 2001, that way  
20 the envelope with the prison markings doesn't come  
21 in.

22 (Whereupon the jury returned to the jury box,  
23 and the following proceedings were had in open  
24 court:)

25 THE COURT: Ms. Williams, you are still under

1 oath.

2 Ladies and gentlemen of the jury, has anyone  
3 received any information other than testimony and  
4 exhibits and arguments from the lawyers?

5 (Negative response from the jury.)

6 FURTHER REDIRECT EXAMINATION

7 BY MRS. PENN:

8 Q. Ms. Williams, you were asked some questions  
9 regarding cards you sent to Mr. Donnie Williams; is  
10 that correct?

11 A. Yes.

12 Q. And didn't he ask for something that Donnie sent to  
13 you?

14 A. No.

15 Q. Did Donnie write any letters to you?

16 A. Yes.

17 Q. Did he send you any cards?

18 A. Yes.

19 Q. Can you count the number of letters he wrote to  
20 you?

21 A. It's so many.

22 Q. Can you count the number of cards he sent to you?

23 A. No.

24 (State's Exhibit No. 4 was marked  
25 for identification.)

1 Q. Let me show you what I've marked as State's Exhibit  
2 Number 4 and ask you if you can identify that  
3 please.

4 What is that, Callie?

5 A. This is a card that Donnie sent me.

6 Q. When did he send that to you?

7 A. I forgot what year he sent it to me.

8 Q. Is there something on the front of that card?

9 A. I think it was 2003.

10 Q. 2003. I think we put a sticky note on the front of  
11 that to help us remember when it was; is that  
12 correct?

13 A. Yes.

14 Q. What is the date on that sticky note?

15 A. I can't understand his writing.

16 Q. August 19, 2003.

17 Is that a fair and accurate representation of  
18 the card that you got on that date on the purple,  
19 sticky note?

20 A. Yes.

21 Q. Is that a card you received from David Donnie  
22 Williams?

23 A. Yes.

24 Q. One of many, isn't it?

25 A. Yes.

1 MRS. PENN: Your Honor, I would like to  
2 introduce State's Exhibit Number 4.

3 MR. AUSBORN: Your Honor, can I quickly voir  
4 dire?

5 THE COURT: Yeah, go ahead.

6 VOIR DIRE EXAMINATION

7 BY MR. AUSBORN:

8 Q. Ms. Callie, you weren't there when this card was  
9 signed; is that right? You weren't there when it  
10 was signed; is that correct?

11 A. No. But that's Donnie's writing.

12 Q. And and you've seen Donnie's writing and you are  
13 sure that's Donnie's writing right here?

14 A. That's his writing at the bottom because I've been  
15 with him several years, and I know his  
16 handwriting.

17 Q. Just out of curiosity, whenever Donnie is writing  
18 something to you, he always signs it; is that  
19 correct?

20 A. Yes.

21 Q. And you know that to be a fact because that's what  
22 he has done all these years, he signs his stuff?

23 MR. AUSBORN: We stipulate to this, Your Honor.

24 FURTHER REDIRECT EXAMINATION (Cont'd)

25 BY MRS. PENN:

1 (State's Exhibit No. 5 was  
2 marked for identification.)

3 Q. I'm going to show you State's Exhibit 5 and tell me  
4 what that is.

5 A. This is a card that he sent me on May 2003.

6 Q. May 2003, he sent it to you?

7 A. Yes.

8 Q. He couldn't be with you?

9 A. No.

10 Q. So he sent you a card?

11 A. Yes.

12 Q. Let me ask you this: Was he able to be with you in  
13 March of 2003?

14 A. No. Because he was in prison.

15 Q. Were you at his mother's house in March of 2004?

16 A. No, I wasn't.

17 Q. So when Lynn and Robert got up here and testified  
18 that they heard what Donnie told you in March of  
19 2003, they are lying?

20 A. Yeah, they lied. Because he was locked up.

21 Q. You said that was a Mother's Day card?

22 A. Yes.

23 Q. And it was sent in May of 2003; is that correct?

24 A. Yes.

25 Q. That's sometime after March of 2003; is that

1 correct?

2 A. Yes.

3 Q. Why don't you read it for the ladies and gentlemen  
4 of the jury?

5 A. Today is your day. You are the same mother every  
6 day. When I think of Mother's Day, I think of one  
7 of the most loving and caring persons in the world  
8 to me. With love, Donnie.

9 Q. Does that sound like he wanted to break up to you?

10 A. No.

11 Q. He ever indicate to you that he wanted to break up?

12 A. No, he haven't told me that.

13 Q. Now --

14 MR. AUSBORN: Can I voir dire as to 5?

15 THE COURT: Voir dire on 5? Go ahead.

16 VOIR DIRE EXAMINATION

17 BY MR. AUSBORN:

18 Q. Ms. Callie, at the bottom, is that card also  
19 signed?

20 A. Yeah, he signed it. But that other writing is  
21 different. That other writing is somebody else's,  
22 but it has his signature trademark; love, Donnie?

23 A. Yes.

24 Q. That's how he signs all of his communications to  
25 you; is that correct?

1 A. Yes.

2 Q. And this is how Number 5 is signed and how Number 3  
3 is signed?

4 THE COURT: Four is signed; is that correct?

5 THE WITNESS: Yes.

6 Q. That's his trademark?

7 A. Yes.

8 MR. AUSBORN: Thank you, Your Honor.

9 THE COURT: Stipulate to the objection of 5?

10 MR. AUSBORN: Yes.

11 THE COURT: Admitted without objection.

12 (State's Exhibit No. 5 was offered  
13 and received into evidence.)

14 (State's Exhibit No. 6 was marked  
15 for identification.)

16 FURTHER REDIRECT EXAMINATION (Cont'd)

17 BY MRS. PENN:

18 Q. This is a composite exhibit that I've marked as  
19 State's Exhibit Number 6 and ask you if you can  
20 identify that?

21 A. Yes. This is Donnie's handwriting.

22 Q. Okay. Is that signed, love, Donnie?

23 A. Not on this one.

24 Q. And what year did you receive that in?

25 A. The year 2001; But I can't remember what month.

1 Q. Can't remember what month.

2 And did that come in an envelope addressed to  
3 you from Donnie?

4 A. Yes.

5 Q. And there are some pictures behind the letter.  
6 Those letters come -- Did those pictures come in  
7 the envelope with the letter?

8 A. Yes.

9 Q. Please describe for the ladies and gentlemen of the  
10 jury what is contained in the three pictures that  
11 was enclosed in that letter that Donnie sent to  
12 you.

13 A. He blacked my face with an ink pen and said that's  
14 the way he would fuck my face when he get out of  
15 prison.

16 Q. He painted your face with an ink pen and said  
17 that's the way he would fuck your face up when he  
18 got out of prison?

19 A. Yeah, that's what he --

20 Q. Did he call you on the phone to tell you that?

21 A. No.

22 MRS. PENN: Your Honor, I move to admit State's  
23 Exhibit Number 6.

24 MR. AUSBORN: Voir dire real quick, Your Honor.

25 THE COURT: Okay.



VOIR DIRE EXAMINATION

BY MR. AUSBORN:

Q. Let me take a look at that, Ms. Callie, if you will, and ask you some questions about that. State's Exhibit Number 4, 5 and 6, and focus on those quickly.

MRS. PENN: You going to voir dire on 4 and 5 again?

MR. AUSBORN: I want to make a comparison real quick.

Q. I want to hand you all three exhibits and ask you some questions concerning the penmanship.

State's Exhibit Number 4, 5 and 6, are they all from different handwritings? In looking at the handwriting, they are all different handwritings; isn't that correct?

A. Yes, but he signed it.

Q. Stay right there.

Now, Number 4 is signed by the person that wrote that, love, Donnie; is that right?

A. He signed it.

Q. Now, you have testified up under oath that Donnie's trademark in communicating with you, he would always sign, love, Donnie. That's what he did, and that's what he did all through the years; is that

1 not correct?

2 A. Yes, but this one letter he didn't say that.

3 Q. Don't get ahead of me.

4 That's what you testified to; is that correct?

5 A. Yes.

6 Q. Number 5 is a different handwriting than Number 4;  
7 is that correct?? Number 5 is the next card?

8 A. Number 5 right there, somebody else wrote it, but  
9 he signed it.

10 Q. Now, this card right here, that handwriting is  
11 different than Number 4; is that correct?

12 A. Yes.

13 Q. Number 5 also has Donnie's trademark signature,  
14 love, Donnie --

15 MRS. PENN: Your Honor, I object to trademark.

16 THE COURT: Sustained.

17 MRS. PENN: It is not a trademark.

18 Q. Let me ask you: One thing about Donnie, when he  
19 communicated to you in letter form, he had a habit  
20 and this habit is all of his communications and  
21 writing would end, love, Donnie?

22 A. Yes.

23 Q. Now, Number 5, how does it end?

24 A. It say, love, Donnie.

25 Q. Love, Donnie.

1           Now I want to talk to you about Number 6. The  
2           penmanship in Number 6 in comparison with Number 4,  
3           is it different than Number 4, the small card?

4       A.   He didn't sign Number 6.

5       Q.   Stay right there before you get ahead of me.

6           I want you to focus on the penmanship.

7           Is it from a different author? Does it appear  
8           to be written from a different author than the pen  
9           that wrote State's Exhibit 4? You agree with that;  
10          is that right?

11      A.   Yes.

12      Q.   State's Exhibit Number 6, in comparison with  
13          State's Exhibit Number 5, the bigger card, the  
14          penmanship in that card is different than State's  
15          Exhibit Number 6; isn't that also correct?

16      A.   Yes. That's his handwriting, what he signed, Love,  
17          Donnie.

18      Q.   My question to you is: I don't want to talk about  
19          how it ends first. I want to talk about the  
20          quality of the penmanship.

21          The penmanship is different in State's Exhibit  
22          Number 5 compared to State's Exhibit Number 6.

23          You would agree with that, wouldn't you; the  
24          handwriting, the cursive is different?

25      A.   Yeah, sometimes I write different in cursive.

1 Q. I don't want you to explain anything. I just want  
2 you to agree or disagree.

3 You agree that the penmanship --

4 MRS. PENN: Objection.

5 THE COURT: Sustained.

6 MRS. PENN: If he wants to let me get it in,  
7 but this is voir dire.

8 MR. AUSBORN: They are attributing three  
9 communications to Donnie, and what I'm trying to  
10 clarify is whether or not in fact all three came  
11 from Donnie.

12 THE COURT: Why don't we ask that?

13 Q. Two of the communications, 4 and 5, came from  
14 Donnie; is that right?

15 A. Yes.

16 Q. And we know that because the ending of those  
17 communications ends the way Donnie has always wrote  
18 to you, and it says, love, Donnie; is that right?

19 A. Yes.

20 Q. Now, Number 6, okay, at the bottom of that it says,  
21 love, Donnie.

22 Does it say that?

23 A. Not on this one.

24 Q. That's something highly irregular and different  
25 about that communication compared to all the

1           countless numbers of communication you've gotten  
2           from Donnie over the years.

3           THE COURT: Is that a question?

4           MR. AUSBORN: Yes.

5           Q. It is something highly irregular from prior  
6           communications with Donnie because it doesn't end  
7           the way Donnie's prior communications end? Because  
8           they always end with, love, Donnie; is that right?

9           A. Yes.

10          Q. That is different than prior?

11          A. Nobody signed it.

12          Q. Now, when this alleged communication was written,  
13          you weren't there watching the author write that  
14          letter, were you?

15          A. No.

16          Q. You weren't there?

17          A. No.

18          Q. So you can't testify with any degree of certainty  
19          or conviction that David Donnie Williams wrote that  
20          letter because you weren't there, am I right?

21          A. No, but I know his handwriting.

22          Q. And you know that letter ends entirely different  
23          than every other countless communications he has  
24          written to you. You would agree with that?

25          Correct?

1 A. Say that again.

2 Q. That letter ends entirely different than every  
3 other countless communication he sent you.

4 All the others said, love, Donnie. That one  
5 does not?

6 A. Yes, because he was mad with me. That's why.

7 MR. AUSBORN: Your Honor, we would respectfully  
8 oppose State's Exhibit Number 6 coming forth  
9 because there has been no predicate establishing  
10 the fact that that communication --

11 THE COURT: Let me ask her a couple of  
12 questions.

13 EXAMINATION

14 BY THE COURT:

15 Q. Ms. Williams, with respect to State's Exhibit 6 and  
16 the photographs, did you receive it in the same  
17 manner that you received the others?

18 A. Yes, came from the same address.

19 Q. And the same return address?

20 A. Yes.

21 Q. And was that return address the same address you  
22 knew to be the residence of Donnie Williams?

23 A. Yes.

24 THE COURT: You move to admit Number 6?

25 MRS. PENN: Yes.

1 THE COURT: State's 6 is admitted.

2 (State's Exhibit No. 6 was offered  
3 and received into evidence.)

4 MR. AUSBORN: Would you give a limiting  
5 instruction?

6 THE COURT: No. You can cross her on it if you  
7 want to.

8 FURTHER REDIRECT EXAMINATION (Cont'd)

9 BY MRS. PENN:

10 Q. Callie, read State's Exhibit Number 6 to the jury.  
11 A. Hi, Bitch Callie, I know about that shit you been  
12 doing. But I just want you to know that you ain't  
13 shit, and when I get out you and that nigger need  
14 to be gone because bitch don't nobody fuck with me  
15 like you do. You knew what you -- I think he  
16 missed some words out right here -- you knew what  
17 you was doing when you had me locked up. And guess  
18 what, I am getting out -- that you was making a  
19 fool out of me, didn't you, but you just didn't  
20 know what you had gotten yourself in. If the -- he  
21 missed some words up right here. -- the list of  
22 thing I do, bitch, am going to get your ass and  
23 that nigger. I told you don't fuck with me. And  
24 then -- (inaudible), but you did know it's time to  
25 show you who I am -- all that shit I sent you, take

1 it back to my sister, that gold chain I give you at  
2 Christmas, take it to -- (inaudible). Yes, bitch,  
3 I know about that nigger. I knew. I just wasn't  
4 going to say nothing until I got out, but you need  
5 to leave town because I will be to see you and good  
6 thing you don't know when; ha, ha. I see you,  
7 bitch.

8 Q. Good thing you don't know when; is that correct?

9 A. That's what he said on the letter.

10 Q. These pictures came in that letter?

11 A. Yes.

12 Q. Are these pictures that you sent to David Donnie  
13 Williams?

14 A. Yes, he had pictures, photos I sent to him.

15 Q. Tell -- Describe the pictures for me, please.

16 A. How you want me to describe them?

17 Q. Who's in the picture?

18 A. It's me. And on one of them, my grandbaby. And  
19 then my daughter, my son and grandbaby in one of  
20 them, and I'm by myself in one.

21 Q. If I looked at that picture, would I be able to  
22 tell that that's you?

23 A. I don't know.

24 Q. Why don't you know?

25 A. Because he colored my face with an ink pen saying



1           how he going to fuck my face up.

2       Q.    Flip that on the back.  Is there anything on the  
3           back of those pictures?

4       A.    I think all three of them state the same.

5       Q.    Do you know what that means?  What did you think  
6           that meant?

7       A.    That he was going to fuck --

8           MR. AUSBORN:  Your Honor, I object.

9           THE COURT:  Sustained.

10          MR. AUSBORN:  Your Honor, can we ask that 4 and  
11          5 be published also?

12          THE COURT:  4 and 5 published also.

13          MRS. PENN:  You can publish when you cross.

14       Q.    And these letters are indicative of your  
15           relationship with Donnie, isn't it?

16       A.    Yes.

17       Q.    Kind of love/hate?

18       A.    Yes.

19       Q.    Back and forth?

20       A.    Yes.

21       Q.    Crazy in love; that's what he said.

22           You were, weren't you?

23       A.    Off and on.

24       Q.    Crazy in love off and on.  At least that's what you  
25           thought it was, didn't you?

1 A. Yes, that's what I thought it was.

2 Q. Insane, irrational, that's what you have been  
3 described as. And you agreed with the defense  
4 attorney, didn't you?

5 A. Yes.

6 Q. But you got your sanity about yourself now, don't  
7 you?

8 A. Yes.

9 Q. Is that why you are not backing down off of these  
10 charges?

11 A. I am not backing down on no charges because he have  
12 threatened my life.

13 Q. You don't have one single letter or card that  
14 Donnie sent to you. It is not just one, is it?

15 A. No. It's several, a lot of them.

16 Q. Lots of them.

17 So many that you can't count, can you?

18 A. No, I can't count them.

19 Q. But we can count these, can't we?

20 A. Yes.

21 Q. How many did we count on these six?

22 A. I think it was six right there.

23 Q. Does that sound like a man trying to break it off?

24 A. No. Because he sent me more than I sent him.

25 Q. On the -- You were asked about were you abused over

1 and -- were you abused for six or seven years?

2 A. It was off and on, not every year.

3 Q. Not every year, was it?

4 A. I know.

5 Q. Because you didn't see him every year, did you?

6 A. No.

7 Q. But you were in a relationship with him for six or  
8 seven years; is that correct?

9 A. Yes.

10 Q. You are not saying that when you saw him he wasn't  
11 abusive to you -- what you're telling the  
12 Court -- Tell them what you are saying.

13 Why didn't you say he abused you for six or  
14 seven years?

15 A. He didn't abuse me for six or seven years because  
16 most of the time he was locked up in prison.

17 Q. You got pictures that you took, Defendant's Exhibit  
18 Number 5, beautiful pictures; I agree with  
19 Mr. Ausborn. He said you were one big happy  
20 family. Is that what he said?

21 A. Yes.

22 Q. Is David Donnie Williams in those pictures?

23 A. No, he is not.

24 Q. As a matter of fact, he was nowhere to be found,  
25 was he?

1 A. No.

2 Q. You had all the reason in the world to be smiling,  
3 didn't you?

4 A. Yes.

5 Q. As a matter of fact, he couldn't do anything to  
6 you, could he?

7 A. No.

8 Q. But threaten you as he normally did, isn't that  
9 correct?

10 A. Yes. Yes.

11 Q. Can you count the number of times Donnie has  
12 threatened to kill you?

13 A. He have told me several times. I just can't  
14 remember how many times.

15 Q. But we do remember April 17th?

16 A. Yeah, I remember April 17th.

17 Q. March the 30th?

18 A. Yes.

19 Q. March the 24th?

20 A. Yes.

21 Q. You remember those dates?

22 A. Yes.

23 Q. And we are here about that today; is that correct?

24 A. Yes.

25 Q. May I see those cards, please?

1 A. (Witness complies.)

2 Q. These are all handmade cards, aren't they?

3 A. Yes.

4 Q. And you know that's not Donnie's handwriting, is  
5 it?

6 A. No, that's not his handwriting.

7 Q. And the wording on the inside, that's not  
8 Donnie's handwriting, is it?

9 A. No.

10 Q. That's not Donnie's handwriting either, is it?

11 A. No.

12 Q. But you know the address on the envelope addressed  
13 to you was Donnie Williams address, wasn't it?

14 A. Yes.

15 Q. And it is not just over a few months, is it?

16 A. Say that again.

17 Q. Those cards and letters didn't come just over a few  
18 months, did they?

19 A. No.

20 Q. You heard your 21-year-old say that Donnie beat  
21 you; correct?

22 A. Yes.

23 Q. Heard her say that Donnie fought her, caused some  
24 scratches on her face. You heard that, didn't you?

25 A. Yes.

1 Q. Is that the truth?

2 A. That's the truth.

3 Q. You heard the 21-year-old daughter say he not only  
4 did that to me; I saw him hit my brother. She told  
5 them that, didn't she?

6 A. No, she didn't say that.

7 Q. She didn't say that. You sure she didn't say that?

8 A. I don't remember her saying hitting her brother.

9 MRS. PENN: That's all.

10 FURTHER RECROSS EXAMINATION

11 BY MR. AUSBORN:

12 Q. Now, Ms. Callie, State's Exhibit Number 4 and 5  
13 forwarded to you in 2003; is that right?

14 A. What did you say?

15 Q. State's Exhibit 4 and 5 were forwarded to you in  
16 2003; is that right?

17 A. Yes.

18 Q. Love notes, love cards; you would agree with it?

19 A. They were supposed to have been.

20 Q. Signed by Donnie's signature in the, love, Donnie;  
21 is that right?

22 A. Yes.

23 Q. And State's Exhibit 6, unsigned. Donnie never sent  
24 you anything unsigned. That's a fact; isn't that  
25 right?

1 MRS. PENN: You asking a question or  
2 testifying?

3 MR. AUSBORN: That's a question.

4 A. The reason he didn't sign that --

5 Q. My question to you, again is, a yes or no response.

6 A. No, he hasn't said nothing to me about it being  
7 signed, about that letter right there.

8 Q. For all you know, because you weren't there when  
9 that letter was written, you don't know who  
10 authored that letter because you weren't there when  
11 it was written; isn't that also true?

12 A. Yes, but --

13 Q. And for all you know, you don't know who authored  
14 that letter because that letter is missing a  
15 critically important ending, and that's, love,  
16 Donnie; that's also correct?

17 A. Yes.

18 MR. AUSBORN: Nothing further for this witness,  
19 Your Honor.

20 THE COURT: Any other?

21 MRS. PENN: Nothing further, Your Honor.

22 (Whereupon the witness left the stand.)

23 THE COURT: Okay. Mr. Ausborn, any other  
24 witnesses?

25 MR. AUSBORN: Your Honor, may we quickly

1 approach?

2 (Whereupon a Bench conference was held  
3 outside the hearing of the reporter and  
4 jury.)

5 (The following Bench conference was held  
6 outside the hearing of the jury:)

7 MR. AUSBORN: Your Honor, motion renewed.

8 THE COURT: Same ruling.

9 Any rebuttal, Mrs. Penn?

10 MR. AUSBORN: The defense rests, also.

11 MRS. PENN: Jenny Renfroe.

12 THE COURT: Call her.

13 (The following proceedings were held  
14 within the hearing of the jury:)

15 THE COURT: Ladies and gentlemen, the defense  
16 has rested and the state has one rebuttal witness  
17 to call.

18 MRS. PENN: The State calls Jenny Renfroe.

19 JENNY RENFROE

20 having first been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MRS. PENN:

23 Q. State your name for the ladies and gentlemen of the  
24 jury, please.

25 A. Jenny Renfroe.



1 Q. What is your occupation, Mrs. Renfroe?

2 A. Social worker at the Department of Human Resources  
3 in Bullock County.

4 Q. Were you working in that capacity in February of  
5 2001?

6 A. Yes.

7 Q. Did you have the opportunity to take or to make an  
8 investigation regarding Callie Williams and her  
9 children?

10 A. Yes.

11 Q. Who would have been the perpetrator, the alleged  
12 perpetrator in that investigation?

13 A. Mr. Donnie Williams.

14 (State's Exhibit Number 7 was  
15 marked for identification.)

16 MR. AUSBORN: Your Honor, may we approach the  
17 Court, please?

18 (The following Bench conference was  
19 held outside the hearing of the jury:)

20 MR. AUSBORN: Your Honor, I have not seen this.  
21 First of all, it is highly irregular.

22 We filed for discovery, and I am entitled to  
23 get this stuff. This witness is not relevant to  
24 the two cases before this Court, April 17, 2004,  
25 and March 30th, 20004. This is way back in 2001.

1 It is highly prejudicial.

2 THE COURT: As her daughter testified about  
3 this abuse in February of 2001, you challenged her  
4 to bring forth any document related to that.

5 Are these those documents?

6 MRS. PENN: Yes, Your Honor. And we had no  
7 idea they existed until she got on the stand and  
8 stated DHR.

9 THE COURT: And in response to that question,  
10 you said, you don't have any documents to show  
11 that, do you.

12 Are you going to offer the documents or just  
13 ask the questions?

14 MRS. PENN: I'm offering them.

15 THE COURT: Give him a chance to look at it.

16 MR. AUSBORN: At any rate, the Court would give  
17 limiting instruction that this ain't got nothing to  
18 do with what --

19 THE COURT: It is offered as rebuttal, and I'll  
20 give a limiting instruction.

21 You want me to give it now.

22 MR. AUSBORN: Yes, please.

23 (The following proceedings were had  
24 within the hearing of the jury:)

25 THE COURT: Ladies and gentlemen, this witness

1 is offered to rebut Ms. Callie Williams offered  
2 that there was a DHR report about her being abused  
3 by Mr. David Donnie Williams, and Mr. Ausborn  
4 challenged her to produce a document that  
5 substantiated that claim. And in response to that,  
6 Mrs. Renfroe from DHR is called to produce that.  
7 And it is offered only for that purpose; not to say  
8 that Mr. Williams is guilty of anything that is  
9 before you in this trial, but just to rebut the  
10 testimony that's been illicit.

11 MR. AUSBORN: Thank you.

12 THE COURT: Go ahead.

13 DIRECT EXAMINATION (Cont'd)

14 BY MRS. PENN:

15 Q. I believe you told us you did make an investigation  
16 regarding a report of abuse regarding Callie  
17 Williams and/or her children?

18 A. Yes.

19 Q. And in your investigation, you talked to Mrs.  
20 Callie Williams, didn't you?

21 A. Yes.

22 Q. Who else did you speak to?

23 A. The children.

24 Q. And is there anybody else you spoke to?

25 A. Mr. Williams.

1 Q. And at the end of your investigation, did you make  
2 a finding?

3 A. Yes.

4 Q. A conclusion based on what you found out in your  
5 investigation?

6 A. Yes.

7 Q. And what was that conclusion or finding?

8 A. The report was indicated.

9 Q. Tell the ladies and gentlemen of the jury what  
10 indicated means.

11 A. Indicated means that we found proof that we could  
12 say it did happen.

13 Q. And let me ask you one more question, and then I'm  
14 going to stop because it is getting late.

15 Did you see any evidence of injury to Lakeisha  
16 Williams?

17 A. Yes.

18 Q. Thank you.

19 MRS. PENN: Those are all of if questions I  
20 have, Your Honor. I move to admit State's Exhibit  
21 Number 7.

22 MR. AUSBORN: Your Honor, that exhibit is  
23 opposed by counsel at this time subject to  
24 cross-examination.

25 THE COURT: Let me see it. You oppose the

1 whole thing or just the findings?

2 MR. AUSBORN: I oppose the whole thing. It is  
3 irrelevant, immaterial not probative and highly  
4 prejudicial.

5 THE COURT: I'll withhold ruling until cross.

6 CROSS-EXAMINATION

7 BY MR. AUSBORN:

8 Q. State your full name again for the Record.

9 A. Jenny Renfroe.

10 Q. Okay. Mrs. Renfroe, I am attorney Keith Ausborn,  
11 and I represent the defendant David Donnie  
12 Williams.

13 If I ask you a question and you don't quite  
14 understand the question, bring it to my attention,  
15 and I'll be happy to clarify that.

16 Were you subpoenaed to be here today?

17 A. Yes.

18 Q. You were?

19 A. (Witness nods affirmatively.)

20 Q. And the State subpoenaed you to be here; is that  
21 correct?

22 A. Through the Court.

23 Q. The State of Alabama?

24 A. Yes.

25 Q. Not the defense; is that correct?

1 A. No.

2 Q. Now, you're employed with the Department of Human  
3 Resources?

4 A. Yes.

5 Q. And how long have you been employed with the  
6 Department of Human Resources?

7 A. Six years.

8 Q. And you were employed with them back in 2001; is  
9 that right?

10 A. Yes.

11 Q. Did you conduct this investigation yourself?

12 A. I did.

13 Q. Now, you know why we're here today?

14 Has the State told you why we are on trial  
15 today?

16 A. No.

17 Q. Now, for clarification to you, David Donnie  
18 Williams is charged with stalking the alleged  
19 victim, Ms. Callie Williams, April 17, 2004.

20 You know nothing about that; is that right?

21 A. No.

22 Q. David Donnie Williams is charged with  
23 harassment/domestic violence of Ms. Callie Williams  
24 March 30, 2004.

25 You know nothing about that?

1 A. No.

2 Q. This alleged investigation that you conducted back  
3 in 2001 has absolutely nothing to do with stalking  
4 that allegedly occurred April 17, 2004; isn't that  
5 true? You agree with that? They are totally  
6 separate and independent?

7 A. Yes.

8 Q. And this alleged investigation that took place in  
9 2001 is totally separate and has nothing to do with  
10 the alleged harassment/domestic violence that  
11 allegedly took place March 30, 2004; is that  
12 correct?

13 A. No.

14 Q. So they have nothing to do with one another; isn't  
15 that also correct? They have nothing to do with  
16 one another; your investigation back in 2001 is  
17 totally separate and unrelated to a claim of  
18 harassment/domestic violence that allegedly took  
19 place March 30 of 2004?

20 You agree with that?

21 A. It has to do with domestic violence.

22 Q. But what I'm saying is they are two totally  
23 separate events?

24 A. Yes.

25 Q. Totally unrelated to one another; is that correct?

1 A. No, not unrelated but the time.

2 Q. Let's talk about that.

3 You said you interviewed Mr. David Donnie  
4 Williams back in 2001?

5 A. Yes.

6 Q. Was it recorded?

7 A. No.

8 Q. Was it videotaped?

9 A. No.

10 Q. He didn't admit that he committed domestic violence  
11 against anybody; isn't that true?

12 A. I don't remember.

13 Q. You don't remember?

14 A. No.

15 Q. You conducted this investigation and you don't  
16 remember. You just spoke about the findings.

17 A. If I can refer to my report, I can let you know.

18 Q. Yeah, please. Take your time.

19 A. Can you repeat your question?

20 Q. Now, David Donnie Williams never admitted that he  
21 committed domestic violence against Lakeisha  
22 Williams; is that not correct?

23 A. That's right.

24 Q. And David Donnie Williams never admitted that he  
25 committed domestic violence against Ms. Callie



1 Williams; is that correct?

2 A. That's right.

3 Q. You have your report in front of you. He never  
4 admitted he committed domestic violence against  
5 either one of them; isn't that correct?

6 A. Yes.

7 Q. Now, you know and I know, and this jury needs to  
8 know, there are two sides to every story; isn't  
9 that correct?

10 A. Yes.

11 Q. And you didn't know Callie Williams back in 2001  
12 before this complaint came to you that was handed  
13 to DHR and told to investigate this? You didn't  
14 know her before then?

15 A. That's right.

16 Q. You didn't know Lakeisha Williams prior to then; is  
17 that right?

18 A. That's right.

19 Q. And you didn't know David Donnie Williams prior to  
20 then; is that right?

21 A. That's right.

22 Q. So you can't say that Callie Williams at that time  
23 was more credible than David or David more credible  
24 than Callie because you knew neither one of the  
25 two; is that right?

1 A. That's right.

2 Q. And likewise you can't say that Lakeisha was more  
3 credible than Donnie or Donnie was more credible  
4 than her because you knew neither of the two at  
5 that time; is that right?

6 A. That's right.

7 Q. Now, when you say that here it is, you investigated  
8 the case and you found that it was indicated, which  
9 means it was proven as factually correct and true,  
10 you are not saying that David Donnie Williams  
11 abused Lakeisha because he denied that he did that;  
12 isn't that right?

13 A. He denied it.

14 Q. And you are not saying that David Donnie Williams  
15 abused Ms. Callie Williams in 2001 because he  
16 denied that also; isn't that correct?

17 A. He denied it.

18 Q. And you would agree that abuse, physical abuse on  
19 another person is a criminal offense; isn't that  
20 right, it is a criminal offense? Unwarranted  
21 touching against another person's person is a  
22 criminal offense. Do you agree with that?

23 A. Yes.

24 Q. You know and I know, and this jury needs to know,  
25 no formal charges were ever prosecuted successfully

1           against that young man right there for assault in  
2           2001. You know that to be a fact; isn't that  
3           correct? He was never found guilty of assault on  
4           Lakeisha Williams; is that not true?

5    A.    It is not in my report.

6    Q.    And he was never found guilty of assault on  
7           Ms. Callie Williams; isn't that true?

8    A.    It is not in my report.

9    Q.    Now, you weren't there when this alleged abuse took  
10          place; isn't that right?

11   A.    No.

12   Q.    And likewise, in your report, how many pictures of  
13          this alleged abuse are part of your report?

14   A.    There were no pictures.

15   Q.    You would agree that you've heard of the adage, a  
16          picture speaks a thousand words. You would agree  
17          with that; you've heard of that?

18   A.    Yes.

19   Q.    There is no picture that speaks any words because  
20          there were no pictures that were part of your  
21          investigation; is that correct?

22   A.    There were no pictures.

23   Q.    You would agree that in order to do a thorough  
24          investigation, pictures should have been taken;  
25          isn't that right?

1 A. It was based on what I observed.

2 Q. But you would agree that observations are  
3 subjective.

4 In other words, what you may have observed in  
5 comparison with what the next person may have  
6 observed may be two different horses. Two people  
7 see one accident, and they both come away with a  
8 different obversation. Do you agree with that?

9 A. Yes.

10 Q. You would agree to eliminate any confusion, any  
11 doubt concerning whether or not somebody suffered  
12 any injuries, the prudent thing to do would have  
13 been for you to take pictures of these alleged  
14 injuries and then incorporate them in as part of  
15 your investigation. That's what should have been  
16 done; you agree with that?

17 And it's okay to make a mistake. We all do.

18 You agree with that?

19 A. No.

20 Q. You don't agree with that?

21 A. No.

22 Q. Do you have access to a camera?

23 A. Yes.

24 Q. Did you have access to a camera at that time?

25 A. A Polaroid.

1 Q. You did?

2 A. Yes.

3 Q. Have you been told by the Department of Human  
4 Resources you can't use the department's camera?

5 A. No.

6 Q. Were you told at that time you couldn't use the  
7 department's camera?

8 A. No.

9 Q. Wouldn't you agree that had you taken a photograph  
10 of these alleged injuries that were suffered by  
11 Ms. Callie Williams as well as Lakeisha Williams,  
12 it would clarify whether or not they in fact  
13 suffered any injuries because we can in fact look  
14 at the pictures and see for ourselves?

15 A. Yes.

16 Q. You didn't do that?

17 A. No.

18 Q. And that's not a good thing; you would agree with  
19 that?

20 A. No.

21 Q. Now, do you have any medical records that show that  
22 Ms. Callie Williams was treated medically for those  
23 alleged injuries?

24 A. No.

25 Q. Do you have any medical records that show that

1 violence occurred, and that man right there  
2 committed that violent act? That's not the  
3 conclusion you made.

4 The conclusion you made was, yes, I believe  
5 violence occurred.

6 MRS. PENN: Your Honor, would you instruct the  
7 attorney to ask a question and let her answer.

8 MR. AUSBORN: I'm trying to.

9 THE COURT: Objection sustained.

10 Q. Did you make the conclusion that, yes, violence  
11 occurred, but I don't know who committed it? Is  
12 that the conclusion you reached?

13 A. No.

14 Q. Did you make the conclusion that, yes, violence  
15 occurred and that man right there David Donnie  
16 Williams committed it?

17 A. Yes.

18 Q. So you believe her over him, Callie Williams over  
19 him, even though you didn't know either of the two  
20 at the time?

21 A. It was based on interview.

22 Q. Excuse me.

23 A. It was based on interviews and what I observed.

24 Q. Based on interviews?

25 A. Interviews and what I observed.

1 Q. You didn't observe this act take place.

2 If you were in here and an accident occurs  
3 outside and you go outside afterwards, you can't  
4 say with any degree of conviction as to who caused  
5 it because you were not there when it occurred.

6 You weren't there when this alleged domestic  
7 violence occurred; isn't that correct?

8 A. No, I was not there.

9 Q. Are you a medical doctor?

10 A. No.

11 Q. Do you have any degree of medical expertise to  
12 where you can draw some sort of conviction in terms  
13 of how a person acquired injuries?

14 A. No.

15 Q. Are you psychic?

16 MRS. PENN: Your Honor, I object; badgering the  
17 witness.

18 THE COURT: Sustained.

19 MRS. PENN: She has told you what the  
20 investigation was based on. She didn't say she was  
21 psychic.

22 Q. Okay. Let me ask you: Do you operate through the  
23 gift of discernment, spiritual discernment, where  
24 you can look at a person?

25 MRS. PENN: Your Honor, I object.

1 THE COURT: Sustained. Sustained.

2 Q. Tell us, if you will, why you believed Callie  
3 Williams over David Donnie Williams.

4 THE COURT: It's been asked and answered. Next  
5 question.

6 MR. AUSBORN: That's all.

7 EXAMINATION

8 BY THE COURT:

9 Q. Mrs. Renfroe, let me ask you this about this one  
10 page:

11 This is a page titled, Worker Assessment. Is  
12 this your finding by you in May of 2001?

13 A. It is.

14 Q. And this is the part of the report you draw your  
15 conclusion with regard to the investigation?

16 A. Yes.

17 THE COURT: With regard to Exhibit 7, I'm going  
18 to allow the page that's her finding. The other is  
19 irrelevant.

20 (State's Exhibit Number 7 was offered  
21 offered and received into evidence.)

22 THE COURT: Ladies and gentlemen, for the  
23 purpose of this testimony and exhibit, it is  
24 offered to rebut the defense's position with the  
25 victim Callie Williams and her daughter that there



1           were no documentations of this alleged abuse in  
2           2001. That's the only purpose it is offered for,  
3           not for any inference concerning the charges  
4           pending against Mr. Williams and the cases we are  
5           here on today.

6           Does everybody understand that instruction?

7           (Affirmative response from the jury.)

8           THE COURT: Now, if there is testimony  
9           concerning some of the other, you can go in to it.

10                           REDIRECT EXAMINATION

11           BY MRS. PENN:

12           Q.    You said you questioned David Donnie Williams; is  
13           that correct?

14           A.    Yes.

15           Q.    Did you send him notice that you had found this  
16           complaint indicated?

17           A.    Yes.

18           Q.    And did he ever respond?

19           A.    No.

20           Q.    And in that letter that you sent to him, did you  
21           tell him he could appeal that decision?

22           A.    Yes.

23           Q.    Was there ever any appeal?

24           A.    No.

25           MRS. PENN: That's all.

1 MR. AUSBORN: One final question.

2 RECROSS-EXAMINATION

3 BY MR. AUSBORN:

4 Q. With respect to the notice you sent to David Donnie  
5 Williams, did you send it certified?

6 A. Yes.

7 Q. Do you have a copy of the certified delivery  
8 showing it was received by him?

9 A. It's in the record.

10 Q. Is it in this record right here saying that he  
11 signed for it?

12 A. May I refer to this?

13 Q. Sure; go ahead.

14 While you are thumbing through there, what we  
15 are looking for is a copy of the actual signature  
16 card.

17 A. That is in the record at the office.

18 Q. It is not here today?

19 A. No. But there is a statement in here that says he  
20 received it.

21 Q. But my question is: Is there a copy of the  
22 signature card?

23 A. It's in the office.

24 Q. And is there a copy of the letter that you sent him  
25 to dispute -- to refute the contentions?

1 A. Yes.

2 Q. And you addressed that out to David Donnie  
3 Williams; is that right?

4 A. Mr. David Donnie Williams.

5 Q. Hardaway Street, 114?

6 A. Jail.

7 Q. But you don't have the certified card here that he  
8 signed it?

9 A. Not that he signed it or that Mr. Hudson signed it.

10 MR. AUSBORN: Your Honor, we would object again  
11 other than that one page coming forward with the  
12 limiting instruction.

13 THE COURT: Anything else?

14 MRS. PENN: Nothing further, Judge.

15 THE COURT: You better get down before they get  
16 something else.

17 (Whereupon the witness left the stand.)

18 THE COURT: Next witness.

19 MRS. PENN: That's it. State rests.

20 THE COURT: Pardon? Any other witnesses?

21 MRS. PENN: No. The State rests.

22 THE COURT: Let me talk to y'all about what's  
23 left.

24 What's left in this trial is a time limited  
25 closing argument from each side that's going to be

1 15 minutes a piece.

2 The state can divide theirs up how they want  
3 to, and the defense can divide theirs up how they  
4 want to. The State goes first, the defense goes  
5 second and the state goes third. They have a total  
6 of 15 minutes. And then a charge from me of the  
7 law.

8 I think I've got it summarized down. It might  
9 take 10 or 15 minutes. That's 45 minutes total  
10 when you do it all together.

11 Do you want to stay today and do that or come  
12 back tomorrow? Y'all want to keep going?

13 (Affirmative response from the jury.)

14 THE COURT: Does anybody need to make any phone  
15 calls and get children picked up or anything like  
16 that?

17 (Negative response from the jury.)

18 THE COURT: All right. Closing from the State.

19 CLOSING ARGUMENTS

20 (Whereupon Mrs. Penn presented her closing  
21 arguments on the behalf of the State and no  
22 objections were made thereto.)

23 THE COURT: Defense.

24 (Whereupon Mr. Ausborn presented his closing  
25 arguments to the jury on behalf of the

1 defendant, and no objections were made  
2 thereto.)

3 THE COURT: Final close from the State.

4 (Whereupon Mrs. Penn presented her final  
5 closing arguments to the jury on behalf of the  
6 State and no objections were made thereto.)

7 THE COURT: Ladies and gentlemen, do you want  
8 to take a break before you get the charge? Y'all  
9 need a bathroom break.

10 (Affirmative response from some jurors.)

11 THE COURT: Take ten minutes. Come straight  
12 back in here when you finish your break.

13 Everybody else remain seated in the courtroom.

14 (Whereupon the jury was given a break, left the  
15 courtroom, and the following proceedings were  
16 held outside the presence of the jury:)

17 THE COURT: Have you checked the exhibits?

18 MR. AUSBORN: Just about. Okay. Go ahead.

19 THE COURT: Carmella, after that is put on one  
20 form, is the State satisfied?

21 MRS. PENN: State is satisfied.

22 THE COURT: Defense?

23 MR. AUSBORN: Yes, yes.

24 THE COURT: Are have you confirmed that all of  
25 the exhibits that are properly admitted are there.

1 MRS. PENN: Yes.

2 MR. AUSBORN: Yes.

3 THE COURT: And the alternate is this person;  
4 and what I do is put her in my office where she is  
5 by herself. And if there is a need for us to put  
6 her on, we can.

7 MR. AUSBORN: Okay.

8 (Whereupon the jury returned to the jury box,  
9 and the following proceedings were had in open  
10 court:)

11 THE COURT: All right. Last time I have to ask  
12 you this, ladies and gentlemen: Have you received  
13 any evidence or information concerning this case  
14 other than the arguments presented to you and the  
15 evidence and testimony?

16 (Negative response from the jury.)

17 JURY CHARGE

18 THE COURT: It is time for me to give you  
19 what's called the charge or the law that you are to  
20 apply in this case.

21 I'll go through this charge kind of in three  
22 sections. First is just some instructions  
23 generally about the law and some instructions about  
24 deliberations or what you are doing.

25 The middle part is the actual law on the

1 charges that are before you and the elements of  
2 those charges. And, finally, I'll talk to you  
3 about the procedure you will employ when you go  
4 back to the jury room.

5 As I told you before the trial started, you  
6 will be the sole and exclusive judges of the facts  
7 of this case.

8 It's your duty to attempt to reconcile the  
9 testimony of all of the witness so as to make them  
10 all speak the truth if that can reasonably be done.

11 If you cannot reasonably reconcile all the  
12 testimony of all of the witnesses, then it is your  
13 duty to determine what the true facts are. In  
14 doing that, you may reject or accept any part of  
15 any testimony of any witness and keep only the part  
16 of the testimony that you consider to be worthy of  
17 belief.

18 In determining what the true facts are from the  
19 evidence, you may take into account and into  
20 consideration any natural interest or bias a  
21 witness may have as a result to his or her  
22 connection with the case.

23 You may take into account any interest or bias  
24 the witness may have shown while testifying.

25 You may take into consideration the demeanor of

1 the witness as to whether the witness has testified  
2 frankly or evasively.

3 You may take into consideration any matter  
4 which you would use in your everyday affairs in  
5 passing upon the truthfulness and accuracy of  
6 someone's testimony.

7 Weigh the testimony that you have heard in this  
8 trial in light of your common observations and  
9 everyday experiences and reach a verdict based upon  
10 the truth as you determine it from all of the  
11 evidence. In this case your verdict must be  
12 unanimous.

13 In arriving at verdict in this case, you must  
14 not permit sympathy, prejudice or emotion to  
15 influence you in any way.

16 The judge is not permitted by law to express  
17 his opinion or comment on the effect of the  
18 evidence that has been presented to you during this  
19 trial or express an opinion as to the credibility  
20 of any of the witnesses that have testified in this  
21 case.

22 Therefore, any ruling, statement or expression  
23 which may have been made by me during the course of  
24 this trial is not to be considered by you as any  
25 effort on my part to convey to you any feeling or



1 opinion about the facts of the case or the  
2 credibility of any of the witnesses.

3 In this case the State of Alabama has the  
4 burden of proving that the defendant is guilty as  
5 charged and that burden rests upon the state.

6 Before a conviction can be had in this case,  
7 the State must satisfy each and every member of the  
8 jury of the defendant's guilt. Unless the State  
9 satisfies you of the defendant's guilt beyond a  
10 reasonable doubt, then he is entitled to an  
11 acquittal.

12 The phrase reasonable doubt is  
13 self-explanatory. Efforts to define it do not  
14 always clarify the term, but it may help you some  
15 to say that the doubt which would justify an  
16 acquittal must be an actual doubt and not a mere  
17 guess or surmise. It is not a forced or captious  
18 doubt. The reasonable doubt which entitles an  
19 accused to an acquittal is not a mere, fanciful,  
20 vague, conjectural or speculative doubt. It is a  
21 doubt which arises from all or part of the evidence  
22 or from lack of evidence or from contradictory  
23 evidence and remains after careful consideration of  
24 the testimony.

25 So you will observe, the State is not required

COURT OF CRIMINAL APPEALS NO. CR 04-0846

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF Bullock COUNTY, ALABAMA

CIRCUIT COURT NO. CC-2004-144

CIRCUIT JUDGE Hon. L. Bernard Smithart

Type of Conviction / Order Appealed From: Stalking

Sentence Imposed: 38 years

Defendant Indigent: ☒ YES ☐ NO

David Donnie Williams

Hon. Donald E. Spencer 334-269-1934

(Appellant's Attorney)

(Telephone No.)

547 S. Lawrence Street

(Address)

Montgomery, AL 36104

(City)

(State)

(Zip Code)

V.

NAME OF APPELLANT

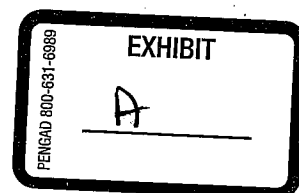
STATE OF ALABAMA

(State represented by Attorney General)

NAME OF APPELLEE

NOTE: If municipal appeal, indicate above, and enter  
name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)



1 to convince you of the defendant's guilt beyond all  
2 doubt but simply beyond a reasonable doubt. Of  
3 course, evidence which merely gives rise to a  
4 surmise, conjecture or suspicion of guilt is  
5 insufficient.

6 Ladies and gentlemen of the jury, some of the  
7 evidence that you have heard in this case is what's  
8 called circumstantial evidence. Circumstantial  
9 evidence is defined by law as positive proof of  
10 circumstances or facts which tend to prove the  
11 existence of other facts that are sought to be  
12 proven. Circumstantial evidence comes to you from  
13 an inference that is drawn from certain physical  
14 facts that are found by you as a result of direct  
15 evidence.

16 When a part or all of the evidence relied upon  
17 by the prosecution is circumstantial evidence, the  
18 chain of circumstances must be so complete and of  
19 such character so as to convince you beyond a  
20 reasonable doubt of the defendant's guilt.

21 A conviction may be had upon evidence which is  
22 circumstantial so long as the evidence is so strong  
23 and cognitive as to prove the defendant's guilt  
24 beyond a reasonable doubt.

25 A conviction may not be had upon circumstantial

1 evidence if there is an inference consistent with  
2 the innocence of the defendant. Evidence of a  
3 circumstantial nature may be sufficient to convict  
4 a defendant only if such evidence convinces you of  
5 the defendant's guilt beyond a reasonable doubt.

6 In this case, Mr. David Donnie Williams, the  
7 defendant, has exercised his constitutional right  
8 not to take the stand and testify in the case.

9 I told you at the beginning of the trial that  
10 the defendant is presumed innocent and that  
11 presumption never changes until the State proves  
12 beyond a reasonable doubt his guilt.

13 The burden of proof is on the State, and I've  
14 explain that burden to you; and it remains with the  
15 State throughout the trial.

16 You are not to attach any significance or any  
17 weight or use in any way the fact that the  
18 defendant did not testify against him. It is not  
19 his burden and never becomes his burden.

20 The defendant in this case is charged with  
21 stalking. A person commits the crime of stalking  
22 if he intentionally and repeatedly follows or  
23 harasses another person and makes a credible  
24 threat, either expressed or implied, with the  
25 intent to place that person in a reasonable fear of

1 death or serious bodily harm.

2 To convict, the State must prove beyond a  
3 reasonable doubt each of the following elements of  
4 stalking:

5 One, that the defendant, David Donnie Williams,  
6 intentionally and repeatedly followed the victim  
7 Callie Williams. Two, that the defendant made an  
8 expressed or implied credible threat. And, three,  
9 that the defendant did so with the intent to place  
10 Callie Williams in reasonable fear of death or  
11 serious bodily injury.

12 To harass is to engage in an intentional course  
13 of conduct directed at a specified person which  
14 alarms or annoys that person or interferes with the  
15 freedom of movement of that person and which serves  
16 no legitimate purpose.

17 The course of conduct must be of such as would  
18 cause a reasonable person to suffer substantial  
19 emotional distress and must actually cause  
20 substantial emotional distress. And course of  
21 conduct is a pattern of conduct composed of a  
22 series of acts over a period of time which  
23 evidences a continuity of purpose.

24 A credible threat is an expressed or implied  
25 threat made with the intent and the apparent

1 ability to carry out the threat so as to cause a  
2 person who is the target of the threat to fear for  
3 his or her safety or the safety of a family member  
4 and to cause reasonable mental anxiety, anguish or  
5 fear.

6 A person acts intentionally with respect to a  
7 result or to conduct when his purpose is to cause  
8 that result or engage in that conduct.

9 If you find from the evidence that the State  
10 has proved beyond a reasonable doubt each of the  
11 above elements of the offense of stalking as  
12 charged, then you shall find the defendant guilty  
13 of stalking.

14 If you find that the State has failed to prove  
15 beyond a reasonable doubt any one or more of the  
16 elements of stalking, then you cannot find the  
17 defendant guilty of stalking.

18 Next, the defendant is charged with domestic  
19 violence/harassment.

20 A person commits domestic violence in the third  
21 degree if that person commits the crime of  
22 harassment pursuant to Subsection A of 13-A-811,  
23 and the victim is a current or former spouse,  
24 parent, child, any person with whom the defendant  
25 has a child in common, a present or former

1 household member, or a person who has or had a  
2 dating or engagement relationship with the  
3 defendant.

4 Harassment: There are two kinds. A person  
5 commits the crime of harassment if with the intent  
6 to harass, annoy or alarm another person, he  
7 strikes, shoves, kicks or otherwise touches a  
8 person or subjects him to physical contact.

9 Also, harassment can be: A person commits the  
10 crime of harassment if with the intent to harass,  
11 annoy or alarm another person, he directs abusive  
12 or obscene language or makes an obscene gesture  
13 toward another person.

14 Obscene means that to the average person  
15 applying contemporary community standards, the work  
16 or performance taken as a whole appeals to the  
17 puritan interest. The work or performance depicts or  
18 describes in a patently offensive way sexual  
19 conduct, actual or stimulated, normal or perverted;  
20 and the work or performance taken as a whole lacks  
21 serious literary, artistic, political or scientific  
22 value.

23 If you find from the evidence that the State  
24 has proved beyond a reasonable doubt each of the  
25 above elements of the offense harassment/domestic

1 violence as charged, then you shall find the  
2 defendant guilty of harassment/domestic violence.

3 If you find that the State has failed to prove  
4 beyond a reasonable doubt any one or more of the  
5 elements of harassment/domestic violence, then you  
6 cannot find the defendant guilty of  
7 harassment/ domestic violence.

8 Ladies and gentlemen, for your purposes, a  
9 verdict form has been prepared for your use in the  
10 deliberation process.

11 Don't read anything in to the order that I put  
12 the verdicts. One had to be first and one second.

13 There is a guilty and not guilty verdict for  
14 each charge.

15 The verdict form in Case Number 144 and 145  
16 reads as follows: We, the jury, find the  
17 defendant, David Donnie Williams, guilty of the  
18 offense of stalking as charged in the indictment;  
19 and has a place for the foreperson to sign.

20 The second verdict would be: We, the jury,  
21 find the defendant, David Donnie Williams, not  
22 guilty of the offense of stalking; place for the  
23 foreperson to sign.

24 Next, you are to consider the offense  
25 harassment/domestic violence. We, the jury, find



1 the defendant, David Donnie Williams, guilty of the  
2 offense harassment/domestic violence as charged in  
3 the indictment. And I have to put a place for the  
4 foreperson to sign that one. Everybody missed  
5 that.

6 And then the last one for not guilty  
7 harassment/domestic violence says: We, the jury,  
8 find the defendant, David Donnie Williams, not  
9 guilty of the offense harassment/domestic violence.

10 During your deliberations, you will go back to  
11 the jury room. The first thing you will do is  
12 elect one of your number as the foreperson of this  
13 jury. It will be that person's job to sign and  
14 return the verdict form once you've reached a  
15 unanimous verdict. It is also that person's job to  
16 moderate discussions.

17 Did anyone take any notes? I didn't see  
18 anybody.

19 (Negative response from the jury.)

20 THE COURT: If you need to take a break during  
21 the deliberations, you have to knock on the door so  
22 that Mr. Smith can let us know and we can put it on  
23 the Record that you are taking a break.

24 If and when you take a break, deliberations  
25 have to stop until all twelve of you are back in

1 the jury room. So if you are not all in the room,  
2 you can't talk about the case.

3 All right. Let me see the lawyers and the  
4 court reporter right back here.

5 (The following conference was held outside  
6 the hearing of the jury:)

7 THE COURT: The jury having been charged except  
8 for the changes in the verdict form, any objections  
9 from the State?

10 MRS. PENN: None, Your Honor.

11 THE COURT: Satisfied?

12 MRS. PENN: Yes.

13 MR. AUSBORN: Satisfied with the verdict form,  
14 Your Honor, but we were wondering if the Court  
15 would be inclined to give a charge about  
16 inconsistent statements given by one of the  
17 victims, because there are inconsistent statements,  
18 and there is a charge that addresses that. But it  
19 is essentially that if you find a witness gives a  
20 statement ...

21 THE COURT: Something other than what I gave  
22 them? You listen to all of the witnesses and  
23 accept what you consider to be worthy of belief;  
24 you throw out what you don't want.

25 Something other than that?

1 MR. AUSBORN: Oh, that's fine, Judge.

2 THE COURT: Other than that line that was  
3 missing from the guilty verdict -- domestic  
4 violence, not guilty which I'm about to have  
5 inserted, everybody satisfied?

6 MRS. AUSBORN: Yes, Judge.

7 MRS. PENN: State's satisfied, Judge.

8 THE COURT: And then the alternate is Beverly  
9 Rotten Chruchwell.

10 MR. AUSBORN: That's correct, Your Honor.

11 MRS. PENN: Right.

12 (The following proceedings were had  
13 within the hearing of the jury:)

14 THE COURT: Okay. With the exception of  
15 Mrs. Beverly Churchwell on the front right -- You  
16 stay where you are seated. -- everyone else return  
17 to the jury room. But don't start deliberations  
18 until Mr. Smith brings in exhibits, and this  
19 verdict form, okay?

20 (Whereupon the jury retired to the  
21 jury room at 5:30 p.m.)

22 The jury began deliberations at 5:33 p.m.)

23 (Whereupon at 5:42 p.m., the jury notified  
24 the baliff they had a question.)

25 THE COURT: Question from the jury.

1           The question reads: What is the sentence of  
2           each offense?

3           What I normally do is put a response on here  
4           that we can all agree to.

5           How about, It is not proper to answer that at  
6           this time?

7           MR. AUSBORN: That's fine.

8           THE COURT: The response agreed on by the  
9           parties says, it is not proper to answer this at  
10          this time written on the bottom of the note that  
11          they have sent out. I'll give it to the bailiff to  
12          give to them.

13          Is that approved by the state?

14          MRS. PENN: Yes.

15          THE COURT: Defense?

16          MR. AUSBORN: Yes.

17          (Whereupon the Court sent the response back in  
18          to the jury deliberation room at 5:45 p.m.)

19          (Whereupon at 6:15 p.m. the jury  
20          sent another note out.)

21          THE COURT: I want y'all to see this: It's got  
22          some vote numbers on it.

23          The note reads -- It gives some numbers on  
24          where they are on domestic violence. How should we  
25          go about resolving this issue?

1 They seem to be split on that.

2 MR. AUSBORN: On behalf of the defense, I  
3 recommend they continue deliberating.

4 THE COURT: Same from the State?

5 MRS. PENN: Yes.

6 MR. AUSBORN: Yes.

7 THE COURT: I'm just going to write that they  
8 continue deliberations.

9 (Whereupon the note with the Court's  
10 response was sent back in to the jury room.)

11 (At 6:25 p.m., the jury informed the baliff  
12 they needed a break, and a break was given.)

13 (Whereupon the jury returned from their break  
14 and resumed deliberations at 6:35 p.m.)

15 (Whereupon the jury informed the bailiff they  
16 had reached a verdict at 6:45 p.m.)

17 THE COURT: Ladies and gentlemen, the jury has  
18 reached a verdict, and I'll bring the jury back in,  
19 and we'll read the verdict. And I want everybody  
20 to remain calm. After the verdict is read, the  
21 jury will go back to the jury room, and then you  
22 will be released for the evening.

23 Bring them in.

24 (Whereupon the jury returned to the jury box,  
25 and the following proceedings were had in

1 open court:)

2 VERDICT

3 THE COURT: Ladies and gentlemen of the jury,  
4 it is my understanding that you have reached a  
5 verdict, and that verdict will be read into the  
6 Record.

7 State of Alabama versus David Donnie Williams,  
8 Case Numbers CC-04-144 and 145: We, the jury, find  
9 the defendant, David Donnie Williams, guilty of the  
10 offense of stalking as charged by the indictment  
11 signed by the foreperson.

12 Next: We, the jury, find the defendant David  
13 Williams not guilty of harassment/domestic  
14 violence, signed and dated by the foreperson,  
15 November 23, 2004.

16 THE COURT: Request polling of the jury?

17 MR. AUSBORN: Yes, sir.

18 (Whereupon the jury was polled, and  
19 all responded in the affirmative.)

20 THE COURT: If you would, ladies and gentlemen,  
21 go back to the jury room one minute, and I'll be in  
22 there in just a minute to dismiss you.

23 (Whereupon the jury left the courtroom, and the  
24 following proceedings were had outside the  
25 presence of the jury:)

1 THE COURT: Defendant approach.

2 (The defendant approaches with counsel.)

3 THE COURT: Mr. David Donnie Williams, in Case  
4 Number CC-04-144, a jury of your peers in Bullock  
5 County, Alabama on this date, November 23, 2004,  
6 has found you guilty of the offense Stalking, as  
7 charged in the indictment, and this Court does now  
8 adjudge you guilty of stalking as charged in the  
9 indictment.

10 The jury has found you not guilty and acquitted  
11 you of the misdemeanor harassment/domestic  
12 violence.

13 Request pre-sentence report?

14 MR. AUSBORN: Yes, Your Honor.

15 THE COURT: The pre-sentence report has been  
16 done. They will come and interview  
17 Mr. Williams.

18 You will need to fill out some forms; victim  
19 impact statements and anything they want considered  
20 for sentencing, which will be set for December 9th.

21 THE COURT: Any questions, Mr. Williams?

22 THE DEFENDANT: I don't feel that I was judged  
23 fairly.

24 THE COURT: Okay. Anything else?

25 THE DEFENDANT: No.

1 Mr. Donnie would like to quickly address the Court,  
2 and I also have the sister.

3 THE COURT: Let me take his statements last. I  
4 also have attached to the report of investigation  
5 the victim's impact statement.

6 Does the State have anything other than that?

7 MRS. PENN: No, Your Honor. After trial there  
8 were some things said, and she was already very  
9 frightened, and we wanted to put her statement in.  
10 And you heard her testify at trial.

11 THE COURT: Okay. As to the stalking --

12 MRS. PENN: That's a Class C felony. And we  
13 have provided Your Honor, as well as defense  
14 counsel, with certified copies of five priors. And  
15 Section 13-A-59-C1, Code of Alabama, states that in  
16 all cases when it is shown that a criminal  
17 defendant has been previously convicted of any  
18 three felonies, and after such has committed  
19 another felony, should he should be punished as  
20 follows: For a class C felony which is for life or  
21 any term not more than 99 years, but not less than  
22 15 years.

23 THE COURT: That's based on the '92 Escape  
24 Third Degree, a '95 Distribution, a '99 Burglary  
25 Third, and a 2001 Theft of Property Second, and



1 2001 Escape Second?

2 MRS. PENN: Yes, Judge.

3 THE COURT: Those are the five priors?

4 MRS. PENN: Yes.

5 THE COURT: With regard the the enhancement,  
6 Mr. Ausborn?

7 MR. AUSBORN: Your Honor, the State has  
8 provided us copies of those, and I reviewed those  
9 with my client and discussed them in detail, and he  
10 does stipulate that he does has five priors and  
11 recognizes that the Court is mandated in applying  
12 the Habitual Offender Act. However, he would like  
13 to, of course, petition the Court for the downward  
14 departure on sentencing and not do the standard  
15 enhancement.

16 THE COURT: For the Record, on the Habitual  
17 Offender Form 13-A-59, three prior felonies and a  
18 Class C felony would take it to a range of 15 to 99  
19 years or life in the state penitentiary and a fine  
20 up to \$20,000.

21 Does everybody agree that's the proper range?

22 MR. AUSBORN: Yes.

23 THE COURT: Anything else?

24 MR. AUSBORN: Ms. Daisy would like to address  
25 the Court, please.

1                                   DAISY ELLIS

2           having first been duly sworn, testified as follows:

3                   THE COURT:   What's your name?

4                   THE WITNESS:   I am Daisy Ellis.

5                   THE COURT:   How are you related to the  
6           defendant?

7                   THE WITNESS:   David Donnie Williams is my  
8           brother.

9                   THE COURT:   Tell me what you want me to know.  
10          You understand what I am deciding today is  
11          Mr. Williams' sentence?

12                  THE WITNESS:   Yes.

13                  THE COURT:   You can tell me anything you want  
14          to tell me about that.

15                  THE WITNESS:   I'm asking the Court to please  
16          have mercy on my brother David Donnie Williams for  
17          what he may have done wrong and not give him life  
18          in prison; to give him parole because he is a good  
19          person and he would never harm anyone.

20                  THE COURT:   Thank you, Ms. Ellis.

21                  Anybody else?

22                  THE DEFENDANT:   I want to address the Court.

23                  My name is David Donnie Williams.   This  
24          incident that took place was between me and a girl  
25          that I had been living with for the last seven

1 years. And I never really brought her any bodily  
2 harm. I always cared for her and her kids, and it  
3 was a relationship that went bad.

4 And when the incident took place, really, I was  
5 just trying to make amends to her and talk to her,  
6 and she was just scared. I never laid a hand on  
7 her and never wanted to lay a hand on her, and I  
8 was just explaining to her that I wanted to go my  
9 way and she go hers. And she was probably scared  
10 of me because of the things I used to do.

11 And I want to address the Court that I used to  
12 do a lot of things in my past and I used drugs and  
13 so forth. But I had just got out of prison, and I  
14 was really trying to straighten my life up and go  
15 on with my life. And I wasn't trying to bring  
16 anyone any harm. The only thing I wanted to do was  
17 live my life, and if I did anything wrong, I want  
18 to say I'm sorry.

19 THE COURT: Do you want to say anything with  
20 regard to your prior record, Mr. Williams?

21 THE DEFENDANT: I would like the Court to give  
22 me something that I can deal with while I am in  
23 prison. I want to go on with my life. I am not  
24 planning on living in Alabama when I get out. I'm  
25 in prison now, and the reason I went back to prison

1 is because she signed the warrants; I was revoked.  
2 I wasn't trying to do any harm. I was working. I  
3 was trying to do what was right. And it just  
4 wasn't enough for her and she kept arguing. And I  
5 just wanted to split because it was driving me back  
6 to the life I used to live. And I was constantly  
7 trying to explain it to her. And every time we  
8 talk, we get upset and have few words. But I never  
9 wanted to give any harm to her. If I would have, I  
10 would've did it in the past.

11 And she was like, you said you was going to do  
12 this to me. And I said, if I was going to do, I  
13 would have done it in the past. We sleep together  
14 every night. I always loved her and loved her kids  
15 as if they were my own. That's why I wouldn't  
16 leave the little kid on the step when she was there  
17 by herself. I loved that little girl. I raised  
18 her from a baby.

19 I wasn't trying to bring anybody no bodily harm  
20 in that house. I seen it wasn't going to work.  
21 And so I was trying to go on about my business. I  
22 am not trying to do anything to her. I want to  
23 stay away from her and make sure I stay away  
24 because I am going to leave town when I get out of  
25 prison. That's the truth, and the Lord knows

1 that's the truth.

2 MR. AUSBORN: I would like to indicate to  
3 correct the record, he stated he had been revoked  
4 by DOC. He was not revoked, he was declared in  
5 the delinquency status pending the disposition of  
6 the case that's before the Court.

7 I would also like to note to the Court as the  
8 Court saw, my client was exonerated and acquitted  
9 of the domestic violence/harassment case, and I  
10 looked through his prior criminal history, and he  
11 has never been convicted of a violent offense.

12 Stalking, for all practice purposes, is more  
13 correlated to an act of violence. This technically  
14 is his first and only offense that is relative to a  
15 potential act of violence.

16 The Court heard the testimony in this case.  
17 This was an indictment that was aggressively  
18 prosecuted and defended. It could have gone either  
19 way. Unfortunately, the scales tipped in the  
20 State's favor. We accept that, but I think now the  
21 Court is tasked with the dubious task of trying to  
22 come up with a sentence that speaks to justice.

23 I don't think this is a young man that the  
24 State can argue or the victim can argue is an  
25 individual that the Court should bring a heavy

1 hand. The appropriate sentence in this case is 15  
2 to life. I believe this young man here, given the  
3 fact he has been locked up, is remorseful, he is  
4 repentant. I think this is a young man who  
5 ought to be considered for the base minimum in this  
6 case, and that's a 15. And we go one step further  
7 by virtue of our filing and ask the Court to  
8 consider a reverse split in this case. He stated  
9 that he doesn't want any further contact with the  
10 victim. And the victim doesn't want to have any  
11 further contact with him. He's got a solid home  
12 plan and will establish a solid vocation plan, et  
13 cetera. I think if the Court were to consider him  
14 for a reverse split, the leash would be short on  
15 him to where if he created any problems, the Court  
16 would be empowered, and I know the State would  
17 surely ensure this, that he would be snatched up in  
18 a heartbeat.

19 But I believe this young man ought to be given  
20 some consideration. He has had his name drug  
21 through the mud in this community, and he has  
22 obviously absolved himself of a relationship with a  
23 young lady he loved and spent seven years with, et  
24 cetera. And we just ask the Court to be very  
25 considerate of those facts.

1 THE COURT: Mrs. Penn?

2 MRS. PENN: Your Honor, I want to address this  
3 motion that the defense has termed, Petition for  
4 Mercy. I would ask the Court to take note that  
5 even though Mr. Williams is asking for leniency in  
6 this case. He is not being entirely truthful. In  
7 the motion, it says, he has accepted responsibility  
8 for his criminal wrongdoing. In his statement  
9 today, he has not accepted any type of criminal  
10 responsibility.

11 And I think that if you take note of everything  
12 that transpired in the trial, even though there  
13 were no convictions, there were charges brought and  
14 dismissed for the victim being afraid, and not  
15 pressing of charges on other charges. So we ask  
16 the Court take judicial notice of the fact that  
17 even though he was not convicted of these offenses,  
18 DHR indicated him for being positive of physical  
19 abuse toward the victim and the children. It is  
20 documented in the DHR records and in this case. So  
21 I wanted to correct the Record about no violence in  
22 this case. The judge was here and there was  
23 testimony about what he told the little boy.

24 David Donnie Williams has had time and time and  
25 time again to become a productive citizen. And

1 each time he went into the penitentiary and came  
2 out, I don't think there was a year lapse from the  
3 time he went in and came out. I think it is time  
4 he go in and serve his time. And we are asking  
5 that the Court sentence him to the maximum of 99 or  
6 life in this case.

7 THE COURT: Anything else?

8 MR. AUSBORN: I'm speechless. He is a young  
9 man that doesn't even come close to swinging to the  
10 high end of the pendulum, Your Honor. And we ask  
11 the Court to grant him some mercy.

12 THE COURT: Mr. Williams, a jury of your peers  
13 has found you guilty of the Class C felony of  
14 Stalking. Your lawyer and you have reviewed the  
15 pardons and parole report and the notice of  
16 enhancement and stipulated to five prior felony  
17 convictions.

18 Under the Alabama Code, it takes you to a  
19 sentencing range of a minimum of 15 years up to  
20 life or 99, and a minimum fine up to \$20,000.

21 Do you understand all of that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Anything else you want to say  
24 before pronouncement of sentence?

25 THE DEFENDANT: Yes, sir. I never meant to



1           bother or hurt this woman. If I did something  
2           wrong, I'm sorry. I used to babysit the kids every  
3           night, and they knew I would never do anything to  
4           hurt them. I babysit those kids when she was  
5           working at night and I worked in the daytime.

6           If the Court feel I did something wrong, I'm  
7           sorry. The only thing I never tried to do was love  
8           them. That's all.

9           I've had a past history of using drugs. I was  
10          trying to get my life together. I am 40 years old  
11          now, and I have been to prison several times,  
12          numerous times. And for once in my life I want to  
13          try to get my life together. I am not trying to  
14          keep being stuck in prison. And I'm trying to do  
15          my time. And I realize when I'm not on drugs, I am  
16          a good person. I don't don't mean anybody any  
17          bodily harm. I've got a straight record in prison  
18          and not a violent person in prison because I am not  
19          drinking or on drugs.

20          I realize that was my problem. I don't want to  
21          be affiliated with that anymore, and I want the  
22          Court to give me a chance to get out and do  
23          something else with the rest of my life. That's  
24          all I want to say.

25          THE COURT: As to restitution, is there any

1 claim for restitution?

2 MRS. PENN: We don't have any at this time.

3 THE COURT: Having considered the testimony  
4 given here today, the testimony and evidence  
5 presented at trial and the jury's verdict, the  
6 Court sentences you, Mr. David Donnie Williams, to  
7 38 years in the state penitentiary. The Court  
8 orders that you attend the Dual Diagnosis Program,  
9 Substance Abuse Program, and the Anger and Stress  
10 Management Program. The Court fines you \$5,000,  
11 zero restitution, victim's comp, court costs, and  
12 no attorneys fees since your attorney was privately  
13 hired. Do you understand your sentence, Mr.  
14 Williams?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you have any questions about it?

17 THE DEFENDANT: (Defendant shakes head.)

18 THE COURT: You have a right to appeal your  
19 sentence and the decision of the jury. Your lawyer  
20 will discuss those options with you and the time  
21 standards that apply.

22 (End of proceedings.)  
23  
24  
25

CRIMINAL APPEALS NUMBER: CR-2004-0846

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IN THE COURT OF CRIMINAL APPEALS  
FOR THE STATE OF ALABAMA

---

DAVID DONNIE WILLIAMS

Appellant

v.

STATE OF ALABAMA

Appellee

---

ON APPEAL FROM THE CIRCUIT COURT OF  
BULLOCK COUNTY, ALABAMA

---

BRIEF OF THE APPELLANT

---

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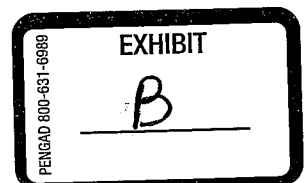


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Statement of the Case

A warrant was signed against David Donnie Williams on April 14, 2004, by Callie Williams for the charge of "Stalking" in violation of §13A-6-90, Code of Alabama, 1975, and for "Domestic Violence-3<sup>rd</sup> degree" in violation of §13A-6-132, of the Code of Alabama, 1975. Williams was indicted by the Bullock County Grand Jury on these charges and on November 15, 2004, Williams was arraigned and entered a plea of not guilty on each charge.

A trial on the merits was held on November 22<sup>nd</sup> and 23<sup>rd</sup> of 2004, and a duly empaneled jury returned a verdict of guilty against Williams on the stalking charge, which is a "Class C" felony and, a verdict of not guilty on the domestic violence charge.

Williams' sentencing was held on December 9, 2004, at which time Williams and his counsel stipulated to 5 (five) prior adult felony convictions. Under the Habitual Felony Offender Act, the sentencing range for Williams was from 15 to 99 years, or life in prison. Williams was sentenced to a term of 38 years in the State Penitentiary on the stalking charge; to attend and complete the Dual

Diagnosis Program, Substance Abuse Program and the Anger and Stress Management Program. Also Williams was fined \$5,000.00, court costs, \$50.00 to the crime victims' compensation fund, and zero dollars in restitution.

Motions for "Reconsideration & Reduction of 38 Year Sentence", "Motion For Judgment Notwithstanding Order of Verdict", "Motion For Trial De Novo Proceeding", and "Motion for Stay of 38 Year Sentence Pending Disposition of All Post Judgment Motions" were filed by Williams' trial counsel on January 10, 2005, thereby suspending the running of the time for filing an appeal. The State filed its "Response to Defendant's Motions" on January 14, 2005.

On January 18, 2005, the Court denied all post-judgment motions filed by counsel on Williams' behalf.

On January 28, 2005, Williams filed a letter with the Bullock County Clerk of Court stating his request to "appeal his sentence". The "Notice of Appeal" as such was timely filed.

Statement of the Issues

Whether the evidence adduced at trial was sufficient to sustain a conviction on the charge of "Stalking" in violation of §13A-6-90, Code of Alabama, 1975.



Statement of Facts

Mr. David Donnie Williams and Ms. Callie M. Williams had an on-going relationship for approximately 6 or 7 years. During that time, there were a number of occasions in which the parties have broke up and/or separated because of discord in the relationship. Some of those separations were because Mr. Williams was and had been incarcerated. For the most part, the couple have lived together throughout their relationship. They were never ceremonially married and Ms. Callie Williams claims that she and Williams are not common law husband and wife.

According to Ms. Callie Williams, she and Williams had gotten off from work at Wayne Farm in the early morning hours of the March 19, 2004. They had gotten paid and Williams had given Ms. Callie Williams some money to hold for him and told her (Callie Williams) that he would be back shortly. Williams was gone for a few hours and when he did come back he was high on crack according to Ms. Williams. Callie Williams stated that Mr. Williams wanted the rest of his money. Callie Williams tried to keep him from taking the money because she thought that

he was going to buy more drugs with it. At that point she told Mr. Williams that she was breaking up with him because of his continued use of illegal drugs, specifically, crack cocaine.

Callie Williams testified that she told Williams that she did not want him (Williams) anymore because he had gotten back on drugs; that he was not doing better nor was he changing as he had promised her he would do. After several hours, Ms. Callie Williams left the area of Wayne Farm and went to her daughter's (Lakeisha Williams) home to sleep.

Later in the day, Williams' brother-in-law brought him over to Lakeisha Williams' house. At that point, Ms. Callie Williams and Williams drove to her house to pick up her children where they got off of the school bus. Ms. Callie Williams asked Williams for her cell phone which he had taken earlier the night before. Williams asked Callie Williams to come into the house with him but Callie refused because she was afraid of him because he was high on crack. Again, Callie Williams told Williams that she did not want him anymore because he had gotten back on crack cocaine.

Callie Williams testified that she then left and went back to her daughter's house. Approximately five or six times during that evening, March 19, 2004, Williams came to Lakeisha Williams' home wanting Callie Williams to go back with him. Each time, Ms. Callie Williams told him no. Callie Williams testified that she was afraid to return to her own house because Williams was high on crack and staying there.

Callie Williams next saw Williams on March 24, 2004, at her job at Wayne Farm, where Williams was also employed. Callie Williams stated that just before work started on the 24<sup>th</sup>, she encountered Williams in the break room. At that point, Williams said to Callie Williams "bitch, you don't ; I'll hurt you. I don't like what you did". (R. 29) as he grabbed the back of her smock. Callie Williams further stated that Williams stated to her that "he was going to make her lose her job". (R. 29) Ms. Callie Williams testified that she thought that this was in retaliation for her calling Mr. Williams parole officer. (R. 29)

Later that same evening a second incident occurred

while still at work. Williams came up behind Callie Williams and again grabbed her smock. According to Ms. Williams, her supervisor, Anthony, saw this incident occur.

A third incident occurred at work on March 24, 2004 at approximately 10:00 P.M. in the break room of Wayne Farm. Ms. Callie Williams stated that Williams again came up behind her and said "I went and told your mama what you did". Ms. Williams again told Williams to leave her alone and kept walking away.

After getting off of work on the March 24, 2004, Callie Williams called her daughter Lakeisha Williams, to come pick her up from work. Callie Williams went home with Lakeisha and was living there at the time on a temporary basis because David Donnie Williams was living in her house. Later that evening, Williams came over to Lakeisha's house where Callie Williams was staying and knocked on the door. No one would open the door for him.

Callie Williams next saw Williams on the 26<sup>th</sup> of March, 2004. He again came over to Lakeisha's house and knocked on the door and again no one would let him in. In

fact, Callie Williams stated that she did not speak at all because she did not want him (Williams) to know that she was in the house.

On March 27, 2004, Callie Williams again encountered Williams. Callie Williams had gone to her home to get her and her children a change of clothes when she saw that Williams' car was parked at her house. Ms. Williams did not enter the house but instead called the Union Springs police because she had signed a "trespass" against Williams on March 24, 2004, which meant that he was not to come back on her property.

When the police arrived, they went in the house and found Williams sleeping. They woke him up and made him leave. Later that same day, March 27<sup>th</sup>, Callie Williams went to a restaurant, "Smokey O's" to get some food. While Ms. Williams, was in the restaurant ordering some food, Williams came inside and approached Callie Williams. Ms. Williams testified that Williams told her "bitch, I don't like what you did to me". (R. 40) Ms. Williams had ordered her food, paid for it and then walked out of the restaurant. Mr. Williams followed directly behind her. Ms. Callie Williams testified that

as she was getting into her car Williams told her "bitch, I will kill you". Ms. Williams testified that her response was "Donnie if you are gonna do it, do it right here. I'm tired of you threatening my life". (R. 41) At that point, Mr. Williams got in his car and left.

The next time that Ms. Callie Williams saw David Donnie Williams was at her house on March 30, 2004. Lakeisha Williams and her child had taken Callie Williams to her house to pick up her (Callie's) daughter, Narkesha, after school. The school bus drops Narkesha off in front of Callie Williams residence each day. When Ms. Williams arrived her daughter was not there. About two minutes later Williams pulled up across the road with the eight year old daughter of Callie Williams (Narkesha Williams) in his car.

Ms. Callie Williams pulled across the road to where Mr. Williams and the child were. Williams got out of the car holding the child's (Narkesha) hand, preventing her from coming to her mother, Ms. Callie Williams. Callie Williams did not get out of the car but her grandson accidentally opened the backdoor. Ms. Williams said that

Williams told her "bitch, I don't like what you did to me and pulled my sweatshirt trying to get me out of the car". (R. 44) Callie Williams further stated that David Donnie Williams at that point said he would kill her. Williams let the child go and she got into the car with her mother, Callie Williams, and they left.

Ms. Callie Williams went to the Union Springs Police Department and filed a report of the incident on March 30, 2004.

On April 17, 2004, Callie Williams and her 14 year old son Quadarius, had gone to her house to wash clothes. She was still not living there because she was afraid of Williams. Ms. Williams and Quadarius drove to the AG grocery which is located one block from their house. The vehicle driven by Ms. Callie Williams was a white Plymouth Lancer owned by her daughter, Lakeisha, and is well known by Williams.

When Ms. Callie Williams went into the AG grocery store, she stated that she did not see Williams or his car anywhere around. After purchasing some orange juice, she and Quadarius came out of the store and started

toward their car. They saw that Williams had backed into the space next to her car. Another man by the name of Anthony Blakeley was in the car with Mr. Williams. Ms. Williams stated that she paused for a minute because she was scared". (R. 51) As she was getting into her car, Williams said "bitch, I don't like what you did to me". Ms. Williams told Mr. Williams to leave her alone. At that point, Ms. Callie Williams' son, Quadarius, ask Williams, "why don't you leave my momma alone?" to which Mr. Williams responded "shut up before I fuck you up". Ms. Williams told her son to not say anything else and get in the car. Ms. Williams stated that at that point David Donnie Williams said that "if you mess around with me, I'd rather see you in heaven or hell". (R. 51) Williams drove away at that point.

When Ms. Callie Williams left the store and entered the roadway she saw Mr. Williams coming up behind her in his car very fast. She called the police on her phone and the police arrived almost immediately. The police attempted to pull Williams over and he fled at a high rate of speed. A police chase ensued.

Later that same day, April 17, 2004, Callie Williams



filed an incident report with the Union Springs Police Department against Williams. A statement was taken from Callie Williams wherein she related the incident that she and her son, Quadarius, had encountered with David Donnie Williams at the AG grocery store.

Statement of the Standard of Review

The standard of review in determining the sufficiency of the evidence to sustain a conviction, is that a reviewing court must accept as true all evidence introduced by the State, accord the State all legitimate inferences therefrom, and consider all evidence in a light most favorable to the prosecution. *Faircloth v. State*, 471 So.2d 485 (Ala.Crm. App. 1984). The function of the Court is to determine whether there is legal evidence from which a rational finder of fact could have, by fair inference, found the defendant guilty beyond a reasonable doubt. *Davis v. State* 598 So.2d 1054 (Ala.Crm. App. 1992). In reviewing a conviction based on circumstantial evidence, this court must view that evidence in the light most favorable to the prosecution. The test to be applied is whether the jury might reasonably find that the evidence excluded every reasonable hypothesis except that of guilt; not whether such evidence excludes every reasonable hypothesis but guilt, but whether a jury might reasonably so conclude.

*United States v. Black*, 497 F.2d 1039 (5<sup>th</sup> Cir. 1974);  
*United States v. McGlamory*, 441 F.2d 130 (5<sup>th</sup> Cir. 1969);  
*Clark v. United States*, 293 F.2d 445 (5<sup>th</sup> Cir. 1961).

### **Summary of the Argument**

The State's failure to produce credible witnesses in addition to the insufficiency of the State's evidence requires that Mr. David Donnie Williams conviction be reversed and his sentence vacated based on the insufficiency of evidence on which to sustain a conviction.

### Argument

At trial, Ms. Callie Williams was the State's first witness and took the witness stand testifying as to the facts previously set forth in the Statement of Facts.

The State next called Ms. Johnnie Baker as their 2<sup>nd</sup> witness. Ms. Baker is a Security Guard employed at Wayne Farm in Union Springs, Alabama. Her testimony was that Williams had been an employee of Wayne Farm at some point because she recognized his face but never knew his name until his employment was terminated. At that point, a note was sent to her post in the Guard Shack that David Williams was not to be allowed back on company property. (R. 135) Ms. Baker further testified that she had seen Williams in the parking lot of Wayne farm property. The third (3<sup>rd</sup>) time this occurred after the note was posted, Baker stated that she went out to the parking lot to advise Williams to stay off of the property. (R. 138) Baker stated that Williams did ask about Callie Williams

and complied with Ms. Baker's instructions to leave the premises. Mr. Williams complied without incident. Ms. Baker did testify that she later saw Mr. Williams drive by her post at the Guard Shack on the roadway in front of Wayne Farm several times, but that he never came back on Wayne Farm property. During cross examination of Ms. Baker by counsel for Williams, counsel asked "You never saw him stalking this young lady; is that not correct?" Ms. Baker answered "it depends on what you mean by stalking". (R. 154 )Further, Ms. Baker stated in her testimony that:

- " Q. April 17, 2004. You weren't around Ms. Callie Williams on April 17, 2004 were you?
- A. I don't know unless she passed through the Guard Shack coming to work and I had to check her ID.
- Q. Did you see Ms. Callie Williams and Mr. David Donnie Williams together on April 17, 2004?
- A. I don't know.
- Q. Now that's the date that the State of Alabama contends that my client stalked Ms. Williams. You didn't see him stalking Ms. Williams on April 17, 2004, did you?
- A. Just because I didn't see it, maybe someone else did. I don't know what

day was April 17<sup>th</sup>. "

(R. 166)

" Q. So as far as the ladies and gentlemen of the jury are concerned, April 17, 2004, you never saw Mr. David Donnie Williams stalk Callie Williams; isn't that correct? Yes or no?

A. Yeah, you are correct. I can't say what date. I can't say I seen him stalking her at all."

(R. 166-167)

The third witness called by the State was Johnny Taylor. Taylor who is a convicted felon with convictions for Theft of Property, a crime of moral turpitude. Mr. Taylor testified that Williams got him to testify in front of the Parole Board that he, Mr. Taylor, was at the AG grocery store on April 17, 2004, and that "... he was sitting in the car, and the guy that arrived with him went inside the store, and when he got ready to come out of the store, Ms. Williams followed the guy out the store, and Ms. Williams started arguing with him."

(R. 176-177)

Mr. Taylor recanted that statement in his testimony. Mr. Taylor bears no credibility as a witness because according to himself, he lied to the Parole Board and now

has changed his story for the District Attorney. However, in later testimony, Mr. Taylor stated that "I don't know noting about him stalking her." (R. 192)

The State's fourth witness was Mr. Wilbert Jernigan, the Clerk of Court for Bullock County, Alabama. Mr. Jernigan could not offer any evidence of the charges against Mr. Williams, as shown by his testimony:

" Q. Now just for clarification, you would agree, Mr. Jernigan, you are not here to testify to the ladies and gentlemen of the jury that I know that Mr. David Donnie Williams committed stalking against Ms. Callie Williams because, first of all, you would agree, you never observed that happening yourself?

A. No sir.

Q. Okay. And furthermore, you never heard those events, alleged events, occur as they were unfolding as well; is that correct?

A. No sir, I did not."

(R. 220)

The State's fifth witness was Narkesha Williams, the eight-year old daughter of Callie Williams. On direct examination by the State, Narkesha Williams testified

that she heard Williams say the "B" word. (R. 252) Narkesha further testified that when Williams picked her up after school, that she, Narkesha willingly got into the car with Williams. (R. 262) Also, Narkesha testified that her mother, Callie Williams, was also cursing at Williams in the incident where Narkesha got into the car with Williams after school. (R. 264)

The States' sixth witness was Quadarius Williams, Callie Williams' 14-year old son. Although Quadarius Williams' testimony mirrored that of his mother Callie Williams regarding the events of April 17, 2004 at the AG grocery store, Quadarius admitted in his testimony that "he does not like Donnie Williams". (R. 284) (Emphasis added) Furthermore, Quadarius testified that his mother Callie Williams had gone over his testimony with him about 50 times to prepare him for court and to help him learn his story. (R. 288-289) On re-cross examination by counsel for the defendant, Quadarius again admitted that he had memorized his testimony.

" Q. And so when you are on the stand today, you don't have a problem



telling the ladies and gentlemen of the jury what happened because your momma made sure you memorized that by going over it day in and day out; is that right?

A. Yes. "

(R. 303-304)

And again on re-cross by counsel for the defendant, Quadarius testified that they were out to get David Donnie Williams and send him to prison.

" Q. Now did they tell you they (Callie Williams mother and prosecutor sic) were out to get David?

A. Yeah.

Q. You know David is on trial, right?

A. Yes.

Q. And they told you they was out to get David, is that right?

A. Yes.

Q. And they told you that they was out to get David and they was going to try to send David to prison or jail, is that right?

A. Yes.

Q. And they told you they needed your help; am I right about that?

A. Yes.

Q. And you love your mama; am I right about that?

A. Yes.

Q. So when your mama tells you, we going to get David, ans she tells you, remember to say this, that's what you going to do; am I right about that? It's okay to tell the truth. That's what you are going to say; isn't that right? You are keeping your commitment to mama in helping to get David; am I right about that?

A. Yes.

Q. And that's why you are here; am I right about that?

A. Yes. "

(R. 304-306)

On redirect examination by the prosecution Quadarius Williams further testified that they were out to get David Donnie Williams.

" Q. Quadarius, when did I tell you we were out to get David Donnie Williams? Did I tell you that this morning? Did I tell you that yesterday? I have never told you that, have I? It's okay for you to tell the truth. I have never told

you that we were out to get David Donnie Williams, did I? I know you told him one thing, but look over there. Don't even look at me. Tell the ladies and gentlemen of the jury the truth, because they need to know. Did I tell you that we were out to get David Donnie Williams?

A. Yes.

Q. When? Think back and tell me when. I want you to take as much time as you need, and I know you can't remember everything and I know you are answering his questions because you think you got to say -  
- you are answering questions because he is being real polite; isn't that right? But I want you to tell them when I told you we were out to get David Donnie Williams. Can you remember that?

A. No. "

(R. 306)

The seventh witness called by the State was Anthony Blakeley. Mr. Blakeley testified that he was in the car (Emphasis added) with David Donnie Williams on April 17, 2004, the date the State alleges that Williams stalked Callie Williams. Mr. Blakeley testified that he did not hear Williams make any kind of threats to Callie Williams or to her son, Quadarius Williams. Mr. Blakeley further

testified that he was in the car with Williams and he did not hear Williams tell Callie Williams that he would "kill her bitch". (R. 314) The only other testimony Blakeley offered at the direction of the prosecution was that they were in a high speed car chase with the Union Springs Police Department on that same day, shortly after leaving the AG grocery store.

On cross examination by counsel for the defendant, Mr. Blakeley stated that it was his idea to stop at the AG grocery and not David Donnie Williams. (R. 328)

The State called its eighth witness, Lt. Durwood Freeman of the Union Springs Police Department. Lt. Freeman's testimony was to that of the high speed chase involving Williams on April 17, 2004 and his testimony corroborated the fact that Anthony Blakeley was in the car with Williams. No testimony was solicited by the prosecutor or offered by the witness to substantiate the stalking charge.

The ninth witness called by the State was Lakeisha Williams, the 21-year old adult daughter of Callie

Williams. Ms. Narkeisha Williams could not testify to the events of April 17, 2004 which occurred at the AG grocery store as she was not present. She however, did testify to almost a mirror image of the remainder of her mother's (Callie Williams) testimony regarding the other issues.

In summary, the testimony of the witnesses for the State did not prove the State's case beyond a reasonable doubt. Starting with Ms. Baker, the Security Guard, she could not testify that she had ever seen Williams stalk Callie Williams. Also, Johnny Taylor stated that he had lied before to the Pardon and Parole Board on Williams behalf. However, Taylor has been convicted of crimes of moral turpitude and as such he has no credibility. Furthermore, Taylor offered no evidence of stalking on the part of Williams.

Mr. Jernigan was called by the State and did not offer any testimony or evidence of stalking on the part of Williams. The younger children of Callie Williams, Quadarius (14) and Narkeisha (8), both offered testimony that was favorable to Williams' defense. Narkeisha stated that she had heard her mother and Williams cursing

each other during quarrels and Quadarius testified that his mother and the prosecutor had helped him memorize his testimony so that they could get David Donnie Williams and send him to prison and that they needed his help to do so. (Emphasis added)

Anthony Blakeley testified that he was in the car with Williams at the time the alleged stalking took place and that at no time did he ever hear any type of threat made by Williams. Additionally, Lt. Freeman testified that his only involvement was that of a high speed chase with Williams concerning traffic violations; that he never observed any stalking by Williams.

In fact, the only witness, other than Callie Williams herself, who gave any type of testimony favorable to the State was Lakeisha Williams, who is the adult (21-year old) daughter of Callie Williams, and her testimony closely mirrored that of her mother.

As such, the only conclusion that can be derived from these facts is that a reasonable jury could not have convicted Williams based on such insufficient evidence as was presented at trial. It is clear that the evidence was of such an insufficient degree that Williams is due a

reversal because the jury's decision was completely contrary to the great weight of the evidence.

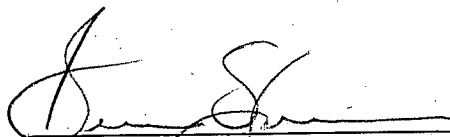
### **Conclusion**

For the foregoing reasons and based on the foregoing authority and testimony, the Appellant believes that the evidence produced at trial is woefully insufficient to support a conviction for "Stalking". The Appellant respectfully requests that his conviction be reversed and his sentence vacated by this Honorable Court.

**Certificate of Service**

I hereby certify that I have served a copy of the foregoing brief and argument of Appellant by placing same in the United States mail, postage prepaid, and properly addresses on this the 4<sup>th</sup> day of August, 2005, upon the following:

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CR-04-0846

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*In the COURT of CRIMINAL APPEALS  
of ALABAMA*

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DAVID DONNIE WILLIAMS,  
  
Appellant,

v.

STATE OF ALABAMA,  
  
Appellee.

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*On Appeal From the Circuit Court of  
Bullock County  
(CC-04-144)*

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**BRIEF OF APPELLEE**

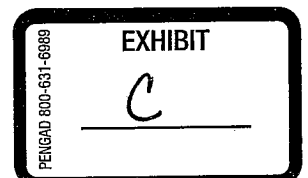
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September 2, 2005



STATEMENT REGARDING ORAL ARGUMENT

Oral argument is unnecessary. "The facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided" by an additional evaluation of the evidence and case law. Ala. R. App. P. 34(a)(3).

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STATEMENT OF THE CASE

This is an appeal from a stalking conviction in the Circuit Court of Bullock County, Alabama (CC-2004-144). Judge L. Bernard Smithart presided.

David Donnie Williams, the appellant in this case, was indicted by a Bullock County Grand Jury on October 19, 2004, and charged with one count of stalking in violation of Section 13A-6-90 of the Code of Alabama (1975). (C. 12-13) On November 9, 2004, Williams waived arraignment and entered a plea of not guilty. (C. 1, 14)

On November 22, 2004, trial commenced and on November 23, 2004, the jury found Williams guilty of one count of stalking. (C. 34; R. 550) On December 9, 2004, the trial court sentenced Williams to thirty-eight years' imprisonment. (C. 37; R. 563) The trial court ordered Williams to attend the Duel Diagnosis Program, Substance Abuse Program, and the Anger and Stress Management Program. (C. 37; R. 563) The trial court imposed a fine of \$5,000 and ordered Williams to pay \$50 to the Crime Victims Compensation Fund. (C. 37; R. 563)

On January 10, 2005, Williams filed a motion for reconsideration and reduction of his sentence, a motion for

reconsideration and reduction of his sentence, a motion for a judgment notwithstanding order of verdict, and a motion for a trial de novo. (C. 39-47) The trial court denied Williams's motions on January 18, 2005. (C. 39-47) On February 9, 2005, the clerk's notice of appeal was filed. (C. 2) On February 24, 2005, an amended notice of appeal was filed. (C. 2)

ISSUES PRESENTED FOR REVIEW

I. Is Williams's contention that there was insufficient evidence properly before this Court for appellate review?

II. Can this Court reweigh evidence presented at trial?

### STATEMENT OF THE FACTS

Callie Williams and Donnie Williams dated off and on from 1997 to 2004.<sup>1</sup> (R. 20-21) Donnie periodically lived with Callie at her home in Comfort Motel Trailer Park until March 2004. (R. 469) Both Callie and Donnie worked at Wayne Farms. (R. 20-22) After receiving their paychecks the previous day, Donnie gave Callie money to "hold" for him on March 19, 2004. (R. 21-22) Throughout the day, Donnie left and returned to Callie's residence several times. (R. 22) During one of the instances when he was present with Callie, Donnie took Callie's cellular telephone. (R. 23) Believing Donnie was buying and using crack cocaine, Callie called her twenty-one-year-old daughter, Lakeisha Williams, to pick her up. (R. 22) Callie stayed the night at her daughter's apartment. (R. 22) When Callie saw Donnie next, she asked him to return her cellular telephone and informed him that she no longer wanted to see him because he was using drugs. (R. 23)

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<sup>1</sup>The record indicates that Callie and Williams were never married.



Later that day, Callie left her residence and drove to the high school to pick up her fourteen-year-old son Q.W.<sup>2</sup> When she returned to her residence, Donnie asked her to drive him to Hendley. (R. 24-25) Callie drove him, and once they arrived, Donnie informed her that it was the wrong place and instructed her to drive him down a dirt road. (R. 25) Believing he planned to kill her because he was using crack cocaine, Callie refused and returned Donnie to her residence. (R. 26) Callie then drove to her daughter's apartment. (R. 26) Donnie came to Lakeisha's residence that night five or six times, attempting to persuade Callie to return to her residence. (R. 23-24, 27)

On March 24, 2004, while standing in the break room at Wayne Farms, Donnie approached Callie and stated "Bitch, you don't know; I'll hurt you." (R. 29) Donnie grabbed Callie's sweatshirt and repeated the statement. (R. 29) He further stated "I don't like what you did." (R. 29) Donnie grabbed her cellular telephone and stated he was "going to make [her] lose [her] job." (R. 29) Callie returned to the floor for work and requested to go to the

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<sup>2</sup>Pursuant to Rule 52 of the Alabama Rules of Appellate Procedure, the initials of any minors will be used to protect their anonymity.

office. (R. 30) While in route, Donnie came up behind Callie and pulled on her smock. (R. 31) Callie reported the incidents to her second shift supervisor who later spoke with Donnie. (R. 31-32)

Later that evening, Donnie again approached Callie while she was on her lunch break in the break room. (R. 33) Donnie stated that he "went and told [her] moma what [she] did." (R. 33) Callie told him to leave her alone, walked away, and reported the confrontation to her supervisor. (R. 33-34) When Callie's shift ended, Lakeisha picked her up and drove Callie to her apartment. (R. 35) Donnie came by Lakeisha's apartment and knocked on the door, but neither Lakeisha nor Callie answered. (R. 35) Callie had the circuit clerk, Wilbert Jernigan, who is also her landlord, issue a trespassing notice against Donnie. Donnie returned to Lakeisha's apartment on March 26, 2004, knocking on the door; however, Callie - again -- did not answer. (R. 36)

On March 27, 2004, Callie returned to her residence to get clothing for herself and her children. (R. 37) When she arrived, she observed Donnie's vehicle outside the

residence. (R. 37) Callie contacted the police. (R. 38) When they arrived, the police found Donnie asleep inside the residence. (R. 38) He was escorted out of the residence and informed of the trespass notice. (R. 38, 349) Later that evening, Callie went to Smokey O's Restaurant, and while inside ordering food, Donnie walked in the restaurant. (R. 39-40) Donnie stated to Callie "Bitch, I don't like what you did to me" and - again -- Callie told him to leave her alone. (R. 40) Callie immediately left the restaurant. (R. 41) As she was getting into her vehicle, Donnie told her "Bitch, I will kill you." (R. 41) Callie responded "If you are going to do it, do it right here. I'm tired of you threatening my life." (R. 41)

On the afternoon of March 30, 2004, Callie and Lakeisha drove to Callie's residence to pick up Callie's daughter, N.W. (R. 42) When they arrived, N.W. was not there. (R. 42) After waiting two or three minutes, Donnie drove up with N.W. in the backseat. (R. 43) When they got out of the vehicle, Donnie held N.W.'s hand preventing her from going to Callie. (R. 43, 250-5) Lakeisha's son, who was

sitting on the back passenger seat, accidentally opened his car door. (R. 44, 383) At that time, Donnie grabbed Callie's sweatshirt and attempted to pull her out of the vehicle through the back door. (R. 44) Callie told Donnie to let N.W. go and Donnie replied "Bitch, I don't like what you did." (R. 44) Donnie told Callie he was going to kill her. (R. 45) Eventually, Donnie released N.W.'s hand and she managed to escape into the car. (R. 45) As Callie attempted to leave her residence, Donnie pulled his vehicle in front of hers. (R. 45) After leaving, Callie went to the police department and filed a report. (R. 46)

On April 17, 2004, Callie and her son Q.W. were at Callie's residence washing clothes. (R. 48) They decided to drive next door to the AG Grocery Store for orange juice. (R. 49) When Callie and Q.W. walked out of the store, Donnie and Anthony Blakely were parked in the space beside Callie's vehicle. (R. 50-51) As Callie approached her vehicle, Donnie stated "Bitch, I don't like what you did." (R. 51) Callie replied "Why don't you leave me alone. I ain't bothering you." (R. 51) At that time, Q.W. told Donnie "Why don't you leave moma alone." (R. 51)

Donnie threatened "Shut up before I fuck you up." (R. 51) Donnie then told Callie that "if you mess around with me, I'd rather see you in heaven or hell." (R. 51) Donnie then drove off. (R. 52) Callie got into her vehicle and began to drive away when she observed Donnie pull up behind her. (R. 53) Callie stopped in the parking lot and called the police. (R. 53)

Lieutenant Durwood Freeman of the Union Springs Police Department received a dispatch call to go to AG Grocery Store and speak with Donnie. (R. 341) When he arrived, Lieutenant Freeman observed Donnie and another male leaving the south end of the parking lot driving towards the trailer park. (R. 341-42) After passing Donnie's vehicle, Lieutenant Freeman turned his patrol car around and initiated his blue lights. (R. 341, 343) Rather than stop, Donnie accelerated resulting in Lieutenant Freeman pursuing him. (R. 341, 343) While in pursuit, Lieutenant Freeman observed Donnie fail to stop at a stop sign, pass another vehicle in a curve and reach speeds of about 100 to 110 miles per hour. (R. 343) When Donnie went into a curve, he hit loose gravel, lost control of the vehicle,

and slid backwards into a pine tree. (R. 343-44) After the vehicle stopped, Donnie jumped out and fled on foot.

(R. 344) Blakely also jumped out of the vehicle and appeared to be "shook up." (R. 345) When Lieutenant Freeman placed Blakely in his patrol car, Blakely informed him that "Donnie fled and [Blakely] tried to get him to stop and let him out of the vehicle." (R. 346) Two days following the chase, Lieutenant Freeman found Donnie standing outside his mother's home on Johnson Street. (R. 347) Lieutenant Freeman issued Donnie a ticket for reckless driving and attempting to elude police, and took Donnie into custody pursuant to Donnie's parole officer's request. (R. 363, 347)

#### STANDARD OF REVIEW

I. This Court will not review an appellant's argument when there is no authority cited pursuant to Rule 28(a)(10) of the Alabama Rules of Appellate Procedure to support his claim. See Hodges v. State, CR-03-1461, 2005 WL 995440, at \*11 (Ala. Crim. App. Apr. 29, 2005).

II. This Court will not reweigh evidence presented at trial when the State has presented a prima facie case. See Jones v. State, CR-03-1179, 2005 WL 1252756, at \*6 (Ala. Crim. App. May 27, 2005).

**SUMMARY OF THE ARGUMENT**

Williams's contention that there was insufficient evidence to support his conviction is waived pursuant to Rule 28(a)(10) of the Alabama Rules of Appellate Procedure. Williams failed to present any authority that demonstrates how the trial court erred in his case.

Furthermore, Williams's contention, although couched as a sufficiency claim, actually argues the weight and credibility of the evidence presented. This Court, however, will not reweigh evidence presented at trial. Because the State presented a prima facie case of stalking, the issue was properly submitted to the jury.



ARGUMENT

I. Williams's Contention That There Was Insufficient Evidence To Support His Conviction For Stalking Is Waived Pursuant To Rule 28(a)(10) Of The Alabama Rules of Appellate Procedure And Thus Is Not Properly Before This Court For Appellate Review.

Williams contends that the State failed to present sufficient evidence of stalking. Because Williams has failed to cite to any rule, code section, or case law in support of his contention, he has waived this argument pursuant to Rule 28(a)(10) of the Alabama Rules of Appellate Procedure. Thus, this issue is not properly before this Court for appellate review.

Rule 28(a)(10) requires that "[a]n argument containing the contentions of the appellant with respect to the issues presented, and the reasons therefor, [must contain] citations to the cases, statutes, other authorities, and parts of the record relied on." This Court has noted that "[i]t is not the job of the appellate courts to do a party's legal research. Nor is it the function of the appellate courts to 'make and address legal arguments for a party based on undelineated general propositions not supported by sufficient authority or argument.'" Hodges v. State, CR-03-1461, 2005 WL 995440, at \*11 (Ala. Crim. App.

Apr. 29, 2005). See also Perry v. State, 861 So. 2d 1, 2 (Ala. Crim. App. 2002) ("Recitation of allegations without citation to any legal authority and without adequate recitation of the facts relied upon had been deemed a waiver of the arguments listed."); Hart v. State, 852 So. 2d 839, 848 (Ala. Crim. App. 2002) (appellant failed to cite any citations to the record and thus waived appellate review of his claim).

In this case, Williams does not cite any authority that demonstrates how the trial court erred. Because he has failed to provide any authority to support his contention, his argument is waived on appeal.

II. This Court Will Not Reweigh Witnesses' Credibility And Substitute Its Judgment For That Of The Jury Because The Weight Of The Evidence Is A Question Of Fact To Be Resolved By The Jury.

Williams contends that there was insufficient evidence to establish that he stalked Callie Williams. He argues that the State failed to produce credible witnesses to support his conviction. (Williams's brief, pgs. 14, 26.) Although couched as a sufficiency claim, the crux of Williams's argument appears to be credibility and weight of the evidence presented to the jury. This Court has repeatedly held that it will not reweigh evidence presented at trial. See Jones v. State, CR-03-1179, 2005 WL 1252756, at \*6 (Ala. Crim. App. May 27, 2005).

This Court has previously noted that:

The *weight* of the evidence is clearly a different matter from the *sufficiency* of the evidence. The sufficiency of the evidence concerns the question of whether, viewing the evidence in the light most favorable to the prosecution, [a] rational fact finder could have found the defendant guilty beyond a reasonable doubt.

In contrast, the '*weight of the evidence*' refers to a determination [by] the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other. '[This Court] ha[s] repeatedly held that it is not the province of this [C]ourt to reweigh the evidence presented at trial.' 'The credibility of witnesses and the weight or probative force of

testimony is for the jury to judge and determine.' Conflicting evidence presents a jury question not subject to review on appeal, provided the State's evidence establishes a prima facie case.

Smith v. State, 745 So. 2d 922, 934 (Ala. Crim. App. 1999) (emphasis in original).

In this case, Williams challenges the credibility and evidence of each State witness. As noted above, any conflicting testimony presented at trial goes "to the weight of the evidence and create[s] questions of fact to be resolved by the jury." Rowell v. State, 647 So. 2d 67, 69-70 (Ala. Crim. App. 1994). See also Hayes v. State, 717 So. 2d 30, 36 (Ala. Crim. App. 1997) (question of fact for the jury's determination as to whether stalking victim had improper motives for filing complaint); Bartlett v. State, 71 So. 2d 305, 308 (Ala. Crim. App. 1997). Consequently, Williams's contention that the State failed to present credible witnesses in its case-in-chief is a question of fact to be determined by the jury.

Furthermore, Williams's contention that the State failed to present sufficient evidence is without merit. When determining the sufficiency of evidence, this Court must decide whether in "viewing the evidence in the light

most favorable to the prosecution, a rational finder of fact could have found the defendant guilty beyond a reasonable doubt." Blount v. State, 876 So. 2d 509, 512 (Ala. Crim. App. 2003). This Court may not determine what the facts are, but must "judge whether the evidence is legally sufficient to allow submission of an issue for decision [by] the jury." Id.

Section 13A-6-90(a) of the Code of Alabama (1975), provides that "[a] person who intentionally and repeatedly follows or harasses another person and who makes a credible threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking." See also Hayes, 717 So. 2d at 33; Jones v. State, CR-03-1179, 2005 WL 1252756, at 4-5 (Ala. Crim. App. May 27, 2005) (evidence of defendant's subsequent bad acts were admissible to show intent to place victim in reasonable fear and showed a repetitive pattern of bad behavior towards the victim). Usually intent cannot be shown by direct evidence and is "left to the province of the jury." Id. at 35. This Court has held that the "testimony of the victim by itself is

sufficient to establish a prima facie case." Bartlett, 701 So. 2d at 308.

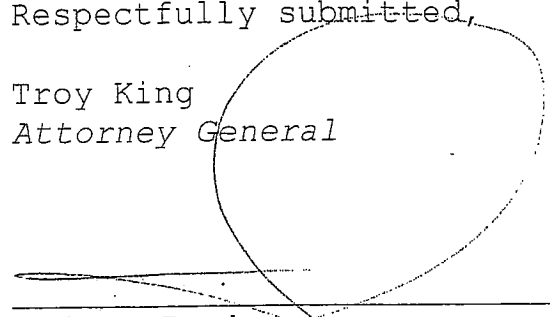
The record shows that, on numerous occasions, Williams followed, confronted, and threatened Callie Williams. Callie testified that, once she broke off their relationship on March 19, 2004, she began to stay at her daughter's apartment. (R. 26) That same night, Williams came to the apartment five or six times attempting to persuade Callie to return to her home. (R. 23-24, 27) On March 24, 2004, Callie went to the circuit clerk's office to obtain a trespass notice against Williams. Later, Williams confronted her on three separate occasions while she was at work. (R. 29-36) During those confrontations, Williams pulled on Callie's clothing and he told her that he did not like what she had done and that he would make her lose her job. (R. 29-36) When Callie returned to her daughter's apartment after work, Williams again came by attempting to persuade Callie to come outside. (R. 35) Williams returned to the apartment again on March 26, 2004, but Callie acted like no one was home and did not open the door. (R. 36)

CONCLUSION

Based on the foregoing, this case is due to be affirmed  
on appeal.

Respectfully submitted,

Troy King  
Attorney General



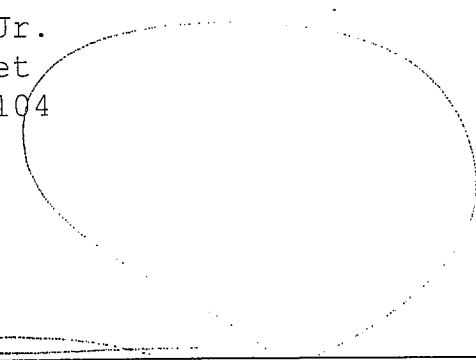
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Audrey Jordan  
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of September, 2005, I did serve a copy of the foregoing on the attorney for Williams, by placing the same in the United States Mail,

Donald Eugene Spencer, Jr.  
547 South Lawrence Street  
Montgomery, Alabama 36104



---

Audrey Jordan  
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Jordan  
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Notice: This unpublished memorandum should not be cited as precedent. See Rule 54, Ala.R.App.P. Rule 54(d), states, in part, that this memorandum "shall have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state, except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar."

## Court of Criminal Appeals

State of Alabama

Judicial Building, 300 Dexter Avenue

P. O. Box 301555

Montgomery, AL 36130-1555

**RELEASED**

DEC 16 2005

CLERK  
ALA COURT CRIMINAL APPEALS

H.W."BUCKY" McMILLAN  
Presiding Judge  
SUE BELL COBB  
PAMELA W. BASCHAB  
GREG SHAW  
A. KELLI WISE  
Judges

Lane W. Mann  
Clerk  
Sonja McKnight  
Assistant Clerk  
(334) 242-4590  
Fax (334) 242-4689

### MEMORANDUM

CR-04-0846

Bullock Circuit Court CC-04-144

David Donnie Williams v. State of Alabama

WISE, Judge.

The appellant, David Donnie Williams, was convicted of stalking, a violation of § 13A-6-90, Ala. Code 1975. Williams was sentenced as an habitual felony offender to 38 years' imprisonment, ordered to pay a \$5,000 fine, \$50 to the crime victim compensation fund, and ordered to attend the Duel Diagnosis Program, Substance Abuse Program and the Anger and Stress Management Program. This appeal followed.

The evidence at trial tended to establish that Donnie and Callie Williams worked together at Wayne Farms and also periodically lived together in the Comfort Motel Trailer Park from 1997 until March 2004. During this time, Donnie

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PENGAD 800-631-6989

intentionally and repeatedly harassed Callie. On March 19, 2004, Donnie left and returned to Callie's residence several times. On one of these occasions, Donnie took Callie's cellular telephone. Callie became suspicious that Donnie was buying and using crack cocaine so she decided to stay with her daughter, Lakiesha Williams. Callie then informed Donnie that he needed to return her phone; she further advised him that she no longer wanted to see him because of his drug use. Later that day, Callie agreed to drive Donnie to Hendley. Before arriving at their destination, Donnie instructed Callie to turn down a dirt road. Callie refused and instead drove back home, believing that Donnie would kill her if she drove down the dirt road. Callie then went to her daughter's apartment. That night, Donnie came to her daughter's apartment five or six times in an attempt to persuade Callie to return home.

On March 24, Donnie approached Callie at work and said, "Bitch, you don't know; I'll hurt you," then grabbed Callie's shirt and repeated the statement. Callie told Donnie that she wanted her phone back and that if he did not let her go that she would lose her job. Later that day, as Callie walked to the office, Donnie grabbed her again. Callie reported the incident to her supervisor, who spoke with Donnie. Again that night Donnie approached Callie and said that he "...went and told momma what [you] did..." Callie asked Donnie to leave her alone and again reported the confrontation to her supervisor. After work, Callie returned to her daughter's apartment. Later, Donnie came to the apartment in search of Callie, but no one responded when he knocked on the door. Callie asked her landlord at the trailer park to issue a trespass notice against Donnie, which he did. On March 26, 2004, Donnie returned to Lakeisha's apartment, but nobody answered the door.

On March 27, 2004, Callie returned to her residence at the trailer park to get clothing for herself and her children. Upon arrival, she observed Donnie's vehicle parked outside the trailer. She contacted the police who arrived, found Donnie asleep inside, escorted him outside and informed him of the trespass notice filed against him. Later that night, Donnie confronted Callie at a local restaurant and said, "Bitch, I don't like what you did to me." Again, Callie told him to leave her alone and immediately left the restaurant. Donnie

followed her outside and said, "Bitch, I will kill you." Callie responded, "If you are going to do it, do it right here. I'm tired of you threatening my life."

On the afternoon of March 30, 2004, Callie and Lakeisha went home to pick up her daughter, N.W. N.W. was not there when they arrived. A few minutes later, Donnie drove up with N.W. in the backseat of his truck. Upon getting out of the vehicle, Donnie held N.W.'s hand, preventing her from going to Callie. Donnie then grabbed Callie's shirt and attempted to pull her out of the vehicle. Callie told Donnie to let N.W. go and he replied, "Bitch, I don't like what you did..." and threatened to kill her. When Donnie finally released N.W.'s hand, she ran to her Callie. They attempted to drive away, but Donnie pulled his truck in front of theirs, preventing their escape. After Callie managed to escape, she drove to the police station and filed a police report.

On April 17, 2004, Callie and her son Q.W. traveled to the AG Grocery Store for orange juice. Upon leaving the store, Donnie was parked in the space behind her and said, "Bitch, I don't like what you did." Callie replied, "Why don't you leave me alone. I ain't bothering you." At this point, Q.W. said to Donnie, "Why don't you leave my momma alone?" Donnie replied to Q.W., "Why don't you shut up before I fuck you up." Donnie then stated to Callie, "...if you mess around with me, I'd rather see you in heaven or hell." Donnie then drove away, as did Callie. After traveling a short way Callie noticed Donnie was following her, so she pulled over and called the police.

Lieutenant Durwood Freeman of the Union Springs Police Department responded to the call. When Freeman arrived at the scene, he observed Donnie driving away and heading towards the trailer park. Freeman turned on his blue lights in order to pull Donnie over but Donnie accelerated and kept going -- reaching speeds in excess of 100 mph. After failing to stop at a stop sign and passing a vehicle in a curve, Donnie lost control of the vehicle, crashed into a pine tree, and fled on foot. Two days after the chase, Freeman located Donnie outside his mother's home. Freeman issued Donnie a ticket for reckless driving and attempting to elude police; he then arrested Donnie pursuant to Donnie's parole officer's request.

At trial, Donnie attempted to discredit the testimony of the nine witnesses who testified for the State. He argued that the only witness who provided any evidence favorable to the State was Lakeisha Williams, who was biased in favor of her mother. Donnie further alleged that the only conclusion that could be derived from these facts is that there was insufficient evidence to sustain his conviction. Alternatively, he argued that the verdict was contrary to the great weight of the evidence.

Williams argues that the evidence presented at trial was insufficient to sustain a conviction for stalking. Initially, we note that Williams's claims are precluded from appellate review as he has failed to comply with Rule 28(a)(10), Ala.R.App.P. by not including the required citation to appropriate authority in support of his contentions. Harrison v. State, 905 So. 2d 858, 860 (Ala.Crim.App. 2005).

In any event, Williams's claim is without merit. Section 13A-6-90, Ala. Code 1975 states, in pertinent part:

"(a) A person who intentionally and repeatedly follows or harasses another person and who makes a credible threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking."

See also Mims v. State, 816 So. 2d 509, 513 (Ala.Crim.App. 2001).

"In determining the sufficiency of the evidence to sustain a conviction, a reviewing court must accept as true all evidence introduced by the State, accord the State all legitimate inferences therefrom, and consider all evidence in a light most favorable to the prosecution." Ballenger v. State, 720 So. 2d 1033, 1034 (Ala. Crim. App. 1998), quoting Faircloth v. State, 471 So. 2d 485, 488 (Ala. Crim. App. 1984), aff'd, 471 So. 2d 493 (Ala. 1985). "The test used in determining the sufficiency of evidence to sustain a conviction is whether, viewing the evidence in the light most favorable to the prosecution, a rational finder of fact could have found the defendant guilty beyond a reasonable doubt." Nunn v. State, 697 So. 2d 497, 498 (Ala. Crim. App. 1997), quoting O'Neal v.

State, 602 So. 2d 462, 464 (Ala. Crim. App. 1992). "'When there is legal evidence from which the jury could, by fair inference, find the defendant guilty, the trial court should submit [the case] to the jury, and in such a case, this court will not disturb the trial court's decision.'" Farrior v. State, 728 So. 2d 691, 696 (Ala. Crim. App. 1998), quoting Ward v. State, 557 So. 2d 848, 850 (Ala. Crim. App. 1990). "The role of appellate courts is not to say what the facts are. Our role ... is to judge whether the evidence is legally sufficient to allow submission of an issue for decision [by] the jury." Ex parte Bankston, 358 So. 2d 1040, 1042 (Ala. 1978). (Emphasis in Bankston.)

Moreover, this Court has stated:

"In deciding whether there is sufficient evidence to support the verdict of the jury and the judgment of the trial court, the evidence must be viewed in a light most favorable to the prosecution, and conflicting evidence presents a jury question not subject to review on appeal, provided the State's evidence established a prima facie case. Williams v. State, 710 So. 2d 1296, 1337 (Ala.Crim.App. 1996), aff'd, 710 So. 2d 1350 (Ala. 1997); Cumbo v. State, 368 So. 2d 871 (Ala.Crim.App. 1978). The action of the trial court in denying a motion for judgment of acquittal or a motion for new trial must be reviewed by determining whether there existed legal evidence from which the jury by fair inference could have found the defendant guilty beyond a reasonable doubt. Williams v. State, 710 So. 2d at 1337; Willis v. State, 447 So. 2d 199 (Ala.Crim.App. 1983). When the evidence raised questions of fact for the jury and such evidence, if believed, was sufficient to sustain a conviction, the denial of a motion for a judgment of acquittal or a motion for new trial on the ground of insufficiency of the evidence does not constitute error. See Williams."

Breckenridge v. State, 628 So. 2d 1012, 1018 (Ala.Crim.App. 1993).

Lastly, any "inconsistencies and contradictions in the

State's evidence, as well as [any] conflict between the State's evidence and that offered by the appellant, goes to the weight of the evidence and [creates a question] of fact to be resolved by the jury." Roswell v. State, 647 So. 2d 67, 69-70 (Ala. Crim. App. 1994).

The evidence adduced at trial showed Donnie Williams intentionally and repeatedly followed, harassed, and expressly threatened Callie Williams with the intent to place her in reasonable fear of death or serious bodily injury. As described above, this occurred no less than six times. Based on the evidence presented at trial, the jury could have reasonably concluded that Donnie Williams stalked Callie Williams.

Based on the foregoing, the judgment of the trial court is affirmed.

**AFFIRMED.**

McMillan, P.J., and Cobb, J., concur. Baschab and Shaw, JJ., concur in the result.

FILED

DEC 28 2005

CLERK  
ALA COURT CRIMINAL APPEALS

CRIMINAL APPEALS NUMBER: CR-04-0846

IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

DAVID DONNIE WILLIAMS,

Appellant,

vs.

STATE OF ALABAMA,

Appellee.

On Appeal from the Circuit Court of  
Bullock County, Alabama (CC-04-144)

APPLICATION FOR REHEARING  
RULE 39(K) REQUEST FOR ADDITIONAL FACTS  
REHEARING BRIEF

David Donnie Williams  
Pro Se, Appellant  
AIS #169189, G2-C-136  
1000 St. Clair Road  
Springville, AL 35146-5582

EXHIBIT

E

PENGAD 800-631-6986

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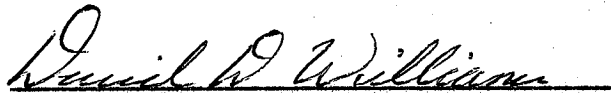
IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

DAVID DONNIE WILLIAMS,	)	
	)	
Appellant,	)	
	)	
vs.	)	CRIMINAL APPEALS NUMBER:
	)	CR-04-0846
STATE OF ALABAMA,	)	
	)	
Appellee.	)	

APPLICATION FOR REHEARING

Appellant, David Donnie Williams, respectfully requests a rehearing in the above-styled cause on the following grounds:

1. This Court erred in holding that the evidence was sufficient to support the Appellant's conviction of stalking.



David D. Williams  
Pro Se, Appellant  
AIS #169189, G2-C-136  
1000 St. Clair Road  
Springville, AL 35146-5582

IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

DAVID DONNIE WILLIAMS,	)	
	)	
Appellant,	)	
	)	
vs.	)	CRIMINAL APPEALS NUMBER:
	)	CR-04-0846
STATE OF ALABAMA,	)	
	)	
Appellee.	)	

RULE 39(K), ARAP, REQUEST FOR ADDITIONAL FACTS

Comes now, David Donnie Williams, and respectfully requests that the Court add the following facts to it's opinion:

STATEMENT OF FACTS

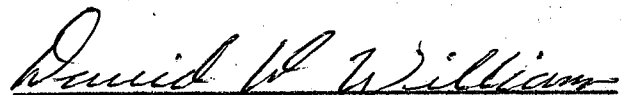
On April 17, 2004, Callie Williams and her 14 year old son Quadarius, had gone to her house to wash clothes. She was still not living there because she was afraid of Williams. Ms. Williams and Quadarius drove to the AG grocery which is located one block from their house. The vehicle driven by Ms. Callie Williams was a white plymouth Lancer owned by her daughter, Lakeisha, and is well known by Williams.

When Ms. Callie Williams went into the AG grocery store, she stated that she did not see Williams or his car anywhere around. After purchasing some orange juice, she and Quadarius came out of the store and started toward their car. They saw that Williams had backed into the space next to her car. Another man by the name of Anthony Blakeley was in the car with Mr. Williams. Ms. Williams stated that she paused for a minute because she was scared".

(R. 51) As she was getting into her car, Williams said "bitch, I don't like what you did to me". Ms. Williams told Mr. Williams to leave her alone. At that point, Ms. Callie Williams' son, Quadarius, ask Williams, "why don't you leave my momma alone?" to which Mr. Williams responded "shut up before I fuck you up". Ms. Williams told her son to not say anything else and get in the car. Ms. Williams stated that at that point David Donnie Williams said that "if you mess around with me, I'd rather see you in heaven or hell". (R. 51) Williams drove away at that point.

When Ms. Callie Williams left the store and entered the roadway she saw Mr. Williams coming up behind her in his car very fast. She called the police on her phone and the police arrived almost immediately. The police attempted to pull Williams over and he fled at a high rate of speed. A police chase ensued.

Later that same day, April 17, 2004, Callie Williams filed an incident report with the Union Springs Police Department against Williams. A statement was taken from Callie Williams wherein she related the incident that she and her son, Quadarius, had encountered with David Donnie Williams at the AG grocery store.



David D. Williams  
Pro Se, Appellant  
AIS #169189, G2-C-136  
1000 St. Clair Road  
Springville, AL 35146-5582

TABLE OF AUTHORITIES

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<u>Ruffin v. State</u> , 513 So.2d 63 (Ala.Crim.App. 1987).....	4

STATEMENT OF FACTS

Appellant incorporates herein the Rule 39(K), ARAP, Request for Additional Facts.

ISSUES

WAS THE EVIDENCE SUFFICIENT TO SUPPORT THE JURY'S VERDICT  
FINDING THE APPELLANT GUILTY OF STALKING?

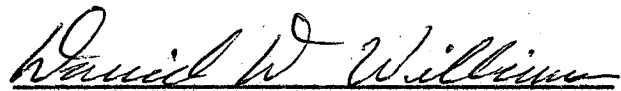
ARGUMENT

This Court in it's discussion of the sufficiency of the evidence to sustain a conviction stated that the evidence adduced at trial showed that the Appellant intentionally and repeatedly followed, harassed, and expressly threatened the alleged victim with the intent to place her in reasonable fear of death or serious bodily injury"..." This is a misstatement of the evidence presented in that there is no evidence that the Appellant intentionally and repeatedly followed, harassed, and expressly threatened the alleged victim with the intent to place her in reasonable fear of death or serious bodily injury.

The Appellant respectfully requests that this Court again review the evidence presented by the State. A review of the evidence reveals that the alleged incident that support to had taken placed on April 17, 2004, between the Appellant and the alleged victim, occurred "only once" and not "repeatedly" (R.51); as previously set forth in the Statement of Facts, that same day, April 17, 2004, the alleged victim filed an incident report with the Union Springs Police Department against the Appellant. A statement was taken from the alleged victim wherein she related the incident that she and her son, Q.W, had encountered with the Appellant at the AG grocery store (R.51). The State simply failed to prove the necessary element of stalking that the accused intentionally and repeatedly followed or harassed another person.

CONCLUSION

The State in a criminal case bears a heavy burden. Evidence which allows only speculation, conjecture or surmise as to guilt is not sufficient to sustain the State's burden. Ruffin v. State, 513 So.2d 63 (Ala.Crim.App. 1987). The Appellant respectfully requests that this Court will again review the record of the evidence presented and that it would then enter an order reversing the Appellant's conviction.

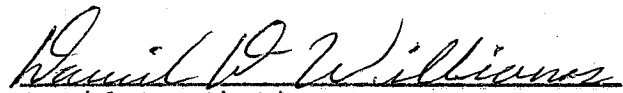


David D. Williams  
Pro Se, Appellant  
AIS #169189, G2-C-136  
1000 St. Clair Road  
Springville, AL 35146-5582



CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been delivered to the Court of Criminal Appeals for service on the Attorney General, this 28th day of December, 2005.

  
David D. Williams  
Pro Se, Appellant

**COURT OF CRIMINAL APPEALS  
STATE OF ALABAMA**

*Jordan 17038*

Lane W. Mann  
Clerk  
Sonja McKnight  
Assistant Clerk



P. O. Box 301555  
Montgomery, AL 36130-1555  
(334) 242-4590  
Fax (334) 242-4689

January 13, 2006

**CR-04-0846**

David Donnie Williams v. State of Alabama (Appeal from Bullock Circuit Court: CC04-144)

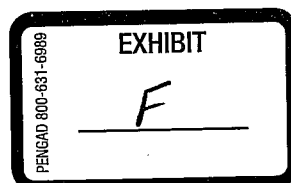
**NOTICE**

You are hereby notified that on January 13, 2006 the following action was taken in the above referenced cause by the Court of Criminal Appeals:

Application for Rehearing Overruled.

**Lane W. Mann, Clerk  
Court of Criminal Appeals**

cc: Hon. Wilbert M. Jernigan, Circuit Clerk  
Donald E. Spencer, Jr., Attorney  
Hon. Audrey Jordan, Asst. Attorney General



**THE STATE OF ALABAMA - - JUDICIAL DEPARTMENT**  
**THE ALABAMA COURT OF CRIMINAL APPEALS**

**CR-04-0846**

David Donnie Williams v. State of Alabama (Appeal from Bullock Circuit Court:  
CC04-144)

**CERTIFICATE OF JUDGMENT**

WHEREAS, the appeal in the above referenced cause has been duly submitted and considered by the Court of Criminal Appeals; and

WHEREAS, the judgment indicated below was entered in this cause on December 16th 2005:

**Affirmed by Memorandum.**

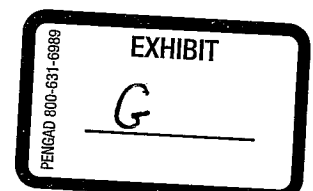
NOW, THEREFORE, pursuant to Rule 41 of the Alabama Rules of Appellate Procedure, it is hereby certified that the aforesaid judgment is final.

Witness, Lane W. Mann, Clerk  
Court of Criminal Appeals, on this  
the 1st day of February, 2006.



Clerk  
Court of Criminal Appeals  
State of Alabama

cc: Hon. L. Bernard Smithart, Circuit Judge  
Hon. Wilbert M. Jernigan, Circuit Clerk  
Donald E. Spencer, Jr., Attorney  
Hon. Audrey Jordan, Asst. Attorney General



COURT OF CRIMINAL APPEALS NO. CR05-1451

## APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF Bullock COUNTY, ALABAMACIRCUIT COURT NO. CC - 2004 - 144.60CIRCUIT JUDGE Hon. L. Bernard SmithartType of Conviction / Order Appealed From: Rule 32 PetitionSentence Imposed: DismissedDefendant Indigent: ☒ YES ☐ NODavid Donnie Williams

NAME OF APPELLANT

(Appellant's Attorney)

(Telephone No.)

(Address)

(City)

(State)

(Zip Code)

V.

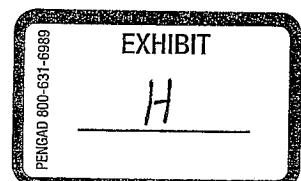
STATE OF ALABAMA

(State represented by Attorney General)

NAME OF APPELLEE

NOTE: If municipal appeal, indicate above, and enter  
name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)



I N D E X

DAVID DONNIE WILLIAMS

VS

STATE OF ALABAMA

CC- 2004 - 144.60

CAS	1
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ALABAMA JUDICIAL INFORMATION SYSTEM CASE: CC 2004 000144.60  
 PL: CEC CASE ACTION SUMMARY  
 AGE: 1 CIRCUIT CRIMINAL RUN DATE: 04/03/2006  
 IN THE CIRCUIT COURT OF BULLOCK JUDGE: LBS

STATE OF ALABAMA VS WILLIAMS DAVID DONNIE  
 505 JOHNSON STREET  
 CASE: CC 2004 000144.60 UNION SPRINGS, AL 36089 0000

DOB: 08/14/1965 SEX: M RACE: B HT: 5 06 WT: 140 HR: BLK EYES: BRO  
 SN: 014622787 ALIAS NAMES:  
 CHARGE01: STALKING CODE01: STAL LIT: STALKING TYP: F #: 001  
 OFFENSE DATE: AGENCY/OFFICER: 0090000

DATE WAR/CAP ISS: DATE ARRESTED:  
 DATE INDICTED: DATE FILED: 03/31/2006  
 DATE RELEASED: DATE HEARING:  
 BOND AMOUNT: \$.00 SURETIES:

DATE 1: DESC: TIME: 0000  
 DATE 2: DESC: TIME: 0000

RACKING NOS: CC 2004 000144 00 /  
 DEF/ATY: BRUNSON PAUL W JR TYPE: A TYPE:  
 P.O. BOX 475  
 CLAYTON AL 36016 00000  
 PROSECUTOR: REEVES BENJAMIN C JR

TH CSE: CC200400014400 CHK/TICKET NO: GRAND JURY:  
 OF REPORTER: SID NO: 000169189  
 EL STATUS: PRISON DEMAND: OPER: CEC  
 DATE ACTIONS, JUDGEMENTS, AND NOTES

3-31-06 Petition for relief from Conviction (w/ Sentence) filed, Copy to DA  
 4-11-06 Inform Plaintiff's Petition; Copy to D.A.  
 4-18-06 Motion to dismiss petition for relief from Conviction... filed  
 4-20-06 Court. Filed.  
 4-25-06 Order filed. Copy to parties.  
 4-27-06 Petitioner's Response as to why his petition should not be dismissed  
 5-2-06 Notice of Appeal filed  
 5-4-06 Clerk's Notice of Appeal filed - forwarded to def, AG, DA, Court  
 of Criminal Appeals

# PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

(Pursuant to Rule 32,  
Alabama Rules of Criminal Procedure)

Case Number

CC	04	144
ID	YR	NUMBER

IN THE \_\_\_\_\_ CIRCUIT \_\_\_\_\_ COURT OF \_\_\_\_\_ BULLOCK \_\_\_\_\_, ALABAMA

DAVID DONNIE WILLIAMS

STATE OF ALABAMA

Petitioner (Full Name)

vs.

Respondent

[Indicate either the "State" or,  
if filed in municipal court, the  
name of the "Municipality"]

Prison Number AIS 169189

Place of Confinement St. Clair Corr. Fac.

County of conviction Bullock County

NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY  
THE ACCOMPANYING INSTRUCTIONS.

- Name and location (city and county) of court which entered the judgment of conviction or sentence under attack Circuit Court of Bullock County, Union Springs, Alabama
- Date of judgment of conviction November 23, 2004
- Length of sentence 38 years
- Nature of offense involved (all counts) Stalking
- What was your plea? (Check one)
  - Guilty \_\_\_\_\_
  - Not guilty ☒ \_\_\_\_\_
  - Not guilty by reason of mental disease or defect \_\_\_\_\_
  - Not guilty and not guilty by reason of mental disease or defect \_\_\_\_\_

6. Kind of trial: (Check one)

(a) Jury X

(b) Judge only \_\_\_\_\_

7. Did you testify at the trial?

Yes \_\_\_\_\_

No X

8. Did you appeal from the judgment of conviction?

Yes X

No \_\_\_\_\_

9. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court Alabama Court of Criminal Appeals

(2) Result Affirmed

(3) Date of result December 16, 2005

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court Alabama Court of Criminal Appeals

(2) Result Rehearing Overruled

(3) Date of result January 13, 2006

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

(1) Name of court None

(2) Result \_\_\_\_\_

(3) Date of result \_\_\_\_\_



4

10. Other than a direct appeal on the judgment of conviction entered after you were convicted, have you ever filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes \_\_\_\_\_ No X

11. If your answer to Question 10 was "yes", then give the following information in regard to the first such petition, application, or motion you filed:

(a) (1) Name of court N/A

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes \_\_\_\_\_ No \_\_\_\_\_

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application, or motion, give the same information:

(1) Name of court N/A

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes \_\_\_\_\_ No \_\_\_\_\_

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) As to any third petition, application, or motion, give the same information (attach additional sheets giving the same information for any subsequent petitions, applications, or motions):

(1) Name of court N/A

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes \_\_\_\_\_ No \_\_\_\_\_

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion?

(1) First petition, etc. Yes \_\_\_\_\_ No \_\_\_\_\_

(2) Second petition, etc. Yes \_\_\_\_\_ No \_\_\_\_\_

(2) Third petition, etc. Yes \_\_\_\_\_ No \_\_\_\_\_

ATTACH ADDITIONAL SHEETS GIVING THE SAME INFORMATION  
FOR ANY SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS.

(e) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not:

N/A  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

## GROUND S OF PETITION

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

- X A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

For your information, the following is a list of the most frequently raised claims of constitutional violation:

- (1) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (2) Conviction obtained by use of coerced confession.
- (3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (5) Conviction obtained by a violation of the privilege against self-incrimination.
- (6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (7) Conviction obtained by a violation of the protection against double jeopardy.
- (8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (9) Denial of effective assistance of counsel.

This list is not a complete listing of all possible constitutional violations.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details.

X B. The court was without jurisdiction to render the judgment or to impose the sentence.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

       C. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

       D. Petitioner is being held in custody after his sentence has expired.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

       E. Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:

The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and

The facts are not merely cumulative to other facts that were known; and

The facts do not merely amount to impeachment evidence; and

If the facts had been known at the time of trial or sentencing, the result would probably have been different; and

The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

- \_\_\_\_\_ F. The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

13. **IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:**

"Successive Petitions. The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exist why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice."

- A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes \_\_\_\_\_

No X \_\_\_\_\_

- B. If you checked "Yes," give the following information as to earlier petition attacking this conviction or sentence:

(a) Name of court N/A \_\_\_\_\_

(b) Result \_\_\_\_\_

(c) Date of result \_\_\_\_\_  
(attach additional sheets if necessary)

- C. If you checked the "Yes" line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labeled: "EXPLANATION FOR NEW GROUND(S) OF RELIEF."

On the separate sheet(s) explain why "good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and [why the] failure to entertain [this] petition will result in a miscarriage of justice."

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes \_\_\_\_\_

No X \_\_\_\_\_

8

15. Give the name and address, if known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

- (a) At preliminary hearing Paul W. Brunson, Jr., Esq., P.O. Box 475,  
Clayton, Alabama 36016
- (b) At arraignment and plea Keith Ausborn, Esq., 1224 Ryan Street,  
Montgomery, Alabama 36107
- (c) At trial Keith Ausborn, Esq., 1224 Ryan Street, Montgomery,  
Alabama 36107
- (d) At sentencing Keith Ausborn, Esq., 1224 Ryan Street, Montgomery,  
Alabama 36107
- (e) On appeal Donald Eugene Spencer, Jr., Esq., 547 South Lawrence  
Street, Montgomery, Alabama 36104
- (f) In any post-conviction proceeding N/A
- (g) On appeal from adverse ruling in a post-conviction proceeding \_\_\_\_\_  
\_\_\_\_\_
- N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes \_\_\_\_\_ No X

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes \_\_\_\_\_ No X

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_  
N/A

(b) And give date and length of sentence to be served in the future: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes \_\_\_\_\_ No \_\_\_\_\_

18. What date is this petition being mailed?

3-28-06

Wherefore, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

# PETITIONER'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct.

Executed on MARCH 28, 2006  
(Date)

*Harold Wilkins*  
Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this the 28<sup>th</sup> day of MARCH, 2006.  
*Glen Wilkins*  
Notary Public

OR \*

## ATTORNEY'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I Swear (or affirm) under penalty of perjury that, upon information and belief, the foregoing is true and correct. Executed on \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Signature of Petitioner's Attorney

SWORN TO AND SUBSCRIBED before me this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Name and address of attorney representing petitioner  
in this proceeding (if any)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* If petitioner is represented by counsel, Rule 32.6(a) permits either petitioner or counsel to verify the petition.

## IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

DAVID DONNIE WILLIAMS,

Petitioner,

vs.

STATE OF ALABAMA,

Respondent.

CASE NO. CC-04-144 <sup>60</sup>

BRIEF AND EVIDENTIARY SUBMISSIONS IN SUPPORT  
OF PETITION FOR RELIEF FROM CONVICTION FILED  
UNDER RULE 32 OF THE ALABAMA RULES OF CRIMINAL PROCEDURE

Comes now the Petitioner in this matter and submits the following in support of his request for relief from conviction. The Petitioner states as follows:

1. Petitioner contends that the trial court erred when the jury informed the trial court that it was deadlocked. Attached and incorporated by reference is page 547-549 during the course of its deliberations, the jury sent word to the trial court, through the bailiff, stating that it could not reach a unanimous decision. The trial court "sent word back to them to keep on deliberating," but gave no further instructions to the jury. Petitioner further contends that, upon learning that the jury was at an impasse, the trial court should have ordered the jury into the courtroom and addressed the jury personally, and that this should have been done in the presence of the Petitioner and his attorney.

In addition to the above, Petitioner claims his trial counsel was ineffectual in that he do not object to the trial court's

actions regarding this situation when it occurred. The record is empty of any objection by his counsel. Ford v. State, 687 So.2d 1258 (Ala.Crim.App. 1996). His failure to object resulted in this case being improperly tried. Further, by not requiring the trial court to order the jury into the courtroom and address the jury personally in the presence of the Petitioner and his counsel, his counsel was ineffectual thereby denying the Petitioner a fair trial. A new trial is needed to protect the rights of the Petitioner.

2. Petitioner contends that the trial court had been without jurisdiction to adjudicate him guilty of the greater offense of stalking because he was acquitted of the lesser-included offense of the misdemeanor harassment/domestic violence. Specifically, Petitioner contends that, because harassment was a lesser-included offense of the greater offense of stalking, his conviction is void because it is impossible to commit the greater offense of stalking without first having committed the lesser-included offense of harassment. Attached and incorporated by reference is page 550-551, 34 jury verdict finding the Petitioner guilty of the offense of stalking, as charged in the indictment and not guilty of the offense of harassment/domestic violence. Pursuant to Rule 2.2 (a) of the Alabama Rules of Criminal Procedure "all felony charges and misdemeanor or ordinance violations which are lesser included offenses within a felony charge or which arise from the same



incident as a felony charge Shall be prosecuted in circuit court, except ... (b)(1) ... (2) misdemeanors that are lesser included offenses within a felony charge as to which concurrent jurisdiction as described in Rule 2.2(a) has not been exercised." As the Alabama Supreme Court explained in Ex parte N.W., 748 So.2d 199 (Ala. 1999) citing Chambers v. City of Opelika, 698 So.2d 792, 794 (Ala. Crim.App. 1996):

"where all the elements of an offense separate from the offense charged are present in or are included among elements of [the] charged offense, such separate offense is a lesser included offense for which [the] defendant may be convicted, though acquitted of the offense charged. To be necessarily included in the greater offense, the lesser must be such that it is impossible to commit the greater without first having committed the lesser."

(Quoting Sharpe v. State, 340 So.2d 885, 887 (Ala.Crim.App.) cert. denied, 340 So.2d 889 (Ala. 1976)) (emphasis added in Chambers). This issue was never raised by the counsel appointed to represent the Appellant on his direct appeal. The issue is so clear that the failure to recognize it and present it on appeal rendered ineffectual assistance for the Petitioner.

3. Petitioner contends that his appellate counsel was ineffectual in his appeal to the Alabama Court of Criminal Appeals. Said appeal raised only one issue, the sufficiency of evidence when other issues were available. Further, the brief written in support of the one issue was written in a manner to be totally incomprehensible. Attached and incorporated by reference is said brief.

WHEREFORE, THE PREMISES CONSIDERED, Petitioner asks this Court to grant his Petition.

Respectfully submitted, this the 28 day of March, 2006.



David D. Williams  
Pro Se, Petitioner  
AIS #169189, G1-B-220  
St. Clair Correctional Facility  
1000 St. Clair Road  
Springville, AL 35146-5582

1 MR. AUSBORN: Oh, that's fine, Judge.

2 THE COURT: Other than that line that was  
3 missing from the guilty verdict -- domestic  
4 violence, not guilty which I'm about to have  
5 inserted, everybody satisfied?

6 MRS. AUSBORN: Yes, Judge.

7 MRS. PENN: State's satisfied, Judge.

8 THE COURT: And then the alternate is Beverly  
9 Rotten Chruchwell.

10 MR. AUSBORN: That's correct, Your Honor.

11 MRS. PENN: Right.

12 (The following proceedings were had  
13 within the hearing of the jury:)

14 THE COURT: Okay. With the exception of  
15 Mrs. Beverly Churchwell on the front right -- You  
16 stay where you are seated. -- everyone else return  
17 to the jury room. But don't start deliberations  
18 until Mr. Smith brings in exhibits, and this  
19 verdict form, okay?

20 (Whereupon the jury retired to the  
21 jury room at 5:30 p.m.)

22 The jury began deliberations at 5:33 p.m.)

23 (Whereupon at 5:42 p.m., the jury notified  
24 the baliff they had a question.)

25 THE COURT: Question from the jury.

1 The question reads: What is the sentence of  
2 each offense?

3 What I normally do is put a response on here  
4 that we can all agree to.

5 How about, It is not proper to answer that at  
6 this time?

7 MR. AUSBORN: That's fine.

8 THE COURT: The response agreed on by the  
9 parties says, it is not proper to answer this at  
10 this time written on the bottom of the note that  
11 they have sent out. I'll give it to the bailiff to  
12 give to them.

13 Is that approved by the state?

14 MRS. PENN: Yes.

15 THE COURT: Defense?

16 MR. AUSBORN: Yes.

17 (Whereupon the Court sent the response back in  
18 to the jury deliberation room at 5:45 p.m.)

19 (Whereupon at 6:15 p.m. the jury  
20 sent another note out.)

21 THE COURT: I want y'all to see this: It's got  
22 some vote numbers on it.

23 The note reads -- It gives some numbers on  
24 where they are on domestic violence. How should we  
25 go about resolving this issue?

16

1 They seem to be split on that.

2 MR. AUSBORN: On behalf of the defense, I  
3 recommend they continue deliberating.

4 THE COURT: Same from the State?

5 MRS. PENN: Yes.

6 MR. AUSBORN: Yes.

7 THE COURT: I'm just going to write that they  
8 continue deliberations.

9 (Whereupon the note with the Court's  
10 response was sent back in to the jury room.)

11 (At 6:25 p.m., the jury informed the baliff  
12 they needed a break, and a break was given.)

13 (Whereupon the jury returned from their break  
14 and resumed deliberations at 6:35 p.m.)

15 (Whereupon the jury informed the bailiff they  
16 had reached a verdict at 6:45 p.m.)

17 THE COURT: Ladies and gentlemen, the jury has  
18 reached a verdict, and I'll bring the jury back in,  
19 and we'll read the verdict. And I want everybody  
20 to remain calm. After the verdict is read, the  
21 jury will go back to the jury room, and then you  
22 will be released for the evening.

23 Bring them in.

24 (Whereupon the jury returned to the jury box,  
25 and the following proceedings were had in

17

1 open court:)

2 VERDICT

3 THE COURT: Ladies and gentlemen of the jury,  
4 it is my understanding that you have reached a  
5 verdict, and that verdict will be read into the  
6 Record.

7 State of Alabama versus David Donnie Williams,  
8 Case Numbers CC-04-144 and 145: We, the jury, find  
9 the defendant, David Donnie Williams, guilty of the  
10 offense of stalking as charged by the indictment  
11 signed by the foreperson.

12 Next: We, the jury, find the defendant David  
13 Williams not guilty of harassment/domestic  
14 violence, signed and dated by the foreperson,  
15 November 23, 2004.

16 THE COURT: Request polling of the jury?

17 MR. AUSBORN: Yes, sir.

18 (Whereupon the jury was polled, and  
19 all responded in the affirmative.)

20 THE COURT: If you would, ladies and gentlemen,  
21 go back to the jury room one minute, and I'll be in  
22 there in just a minute to dismiss you.

23 (Whereupon the jury left the courtroom, and the  
24 following proceedings were had outside the  
25 presence of the jury:)

18

1 THE COURT: Defendant approach.

2 (The defendant approaches with counsel.)

3 THE COURT: Mr. David Donnie Williams, in Case  
4 Number CC-04-144, a jury of your peers in Bullock  
5 County, Alabama on this date, November 23, 2004,  
6 has found you guilty of the offense Stalking, as  
7 charged in the indictment, and this Court does now  
8 adjudge you guilty of stalking as charged in the  
9 indictment.

10 The jury has found you not guilty and acquitted  
11 you of the misdemeanor harassment/domestic  
12 violence.

13 Request pre-sentence report?

14 MR. AUSBORN: Yes, Your Honor.

15 THE COURT: The pre-sentence report has been  
16 done. They will come and interview  
17 Mr. Williams.

18 You will need to fill out some forms; victim  
19 impact statements and anything they want considered  
20 for sentencing, which will be set for December 9th.

21 THE COURT: Any questions, Mr. Williams?

22 THE DEFENDANT: I don't feel that I was judged  
23 fairly.

24 THE COURT: Okay. Anything else?

25 THE DEFENDANT: No.

19  
34

IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

STATE OF ALABAMA,  
Plaintiff,

vs.

DAVID DONNIE WILLIAMS,  
Defendant.

CASE NO. CC-2004-144 & 145

JURY VERDICT

GUILTY VERDICT

We, the Jury, find the Defendant, David Donnie Williams, guilty of the offense of  
Stalking, as charged in the Indictment.

Melvin V. Sarnel  
Foreperson

NOT GUILTY VERDICT

We, the jury, find the Defendant, David Donnie Williams, not guilty of the offense of  
stalking.

Foreperson

GUILTY VERDICT

We, the jury, find the Defendant, David Donnie Williams, guilty of the offense of  
Harassment/Domestic violence as charged in the Indictment.

Foreperson

NOT GUILTY VERDICT

We, the jury, find the Defendant, David Donnie Williams, not guilty of the offense of  
Harrassment/Domestic violence.

Melvin V. Sarnel  
Foreperson

So Say We All.  
November 23, 2004



CRIMINAL APPEALS NUMBER: CR-2004-0846

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IN THE COURT OF CRIMINAL APPEALS  
FOR THE STATE OF ALABAMA

---

DAVID DONNIE WILLIAMS

Appellant

v.

STATE OF ALABAMA

Appellee

---

ON APPEAL FROM THE CIRCUIT COURT OF  
BULLOCK COUNTY, ALABAMA

---

BRIEF OF THE APPELLANT

---

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Statement of the Case

A warrant was signed against David Donnie Williams on April 14, 2004, by Callie Williams for the charge of "Stalking" in violation of §13A-6-90, Code of Alabama, 1975, and for "Domestic Violence-3<sup>rd</sup> degree" in violation of §13A-6-132, of the Code of Alabama, 1975. Williams was indicted by the Bullock County Grand Jury on these charges and on November 15, 2004, Williams was arraigned and entered a plea of not guilty on each charge.

A trial on the merits was held on November 22<sup>nd</sup> and 23<sup>rd</sup> of 2004, and a duly empaneled jury returned a verdict of guilty against Williams on the stalking charge, which is a "Class C" felony and, a verdict of not guilty on the domestic violence charge.

Williams' sentencing was held on December 9, 2004, at which time Williams and his counsel stipulated to 5 (five) prior adult felony convictions. Under the Habitual Felony Offender Act, the sentencing range for Williams was from 15 to 99 years, or life in prison. Williams was sentenced to a term of 38 years in the State Penitentiary on the stalking charge; to attend and complete the Dual

Diagnosis Program, Substance Abuse Program and the Anger and Stress Management Program. Also Williams was fined \$5,000.00, court costs, \$50.00 to the crime victims' compensation fund, and zero dollars in restitution.

Motions for "Reconsideration & Reduction of 38 Year Sentence", "Motion For Judgment Notwithstanding Order of Verdict", "Motion For Trial De Novo Proceeding", and "Motion for Stay of 38 Year Sentence Pending Disposition of All Post Judgment Motions" were filed by Williams' trial counsel on January 10, 2005, thereby suspending the running of the time for filing an appeal. The State filed its "Response to Defendant's Motions" on January 14, 2005.

On January 18, 2005, the Court denied all post-judgment motions filed by counsel on Williams' behalf.

On January 28, 2005, Williams filed a letter with the Bullock County Clerk of Court stating his request to "appeal his sentence". The "Notice of Appeal" as such was timely filed.

Statement of the Issues

Whether the evidence adduced at trial was sufficient to sustain a conviction on the charge of "Stalking" in violation of §13A-6-90, Code of Alabama, 1975.

Statement of Facts

Mr. David Donnie Williams and Ms. Callie M. Williams had an on-going relationship for approximately 6 or 7 years. During that time, there were a number of occasions in which the parties have broke up and/or separated because of discord in the relationship. Some of those separations were because Mr. Williams was and had been incarcerated. For the most part, the couple have lived together throughout their relationship. They were never ceremonially married and Ms. Callie Williams claims that she and Williams are not common law husband and wife.

According to Ms. Callie Williams, she and Williams had gotten off from work at Wayne Farm in the early morning hours of the March 19, 2004. They had gotten paid and Williams had given Ms. Callie Williams some money to hold for him and told her (Callie Williams) that he would be back shortly. Williams was gone for a few hours and when he did come back he was high on crack according to Ms. Williams. Callie Williams stated that Mr. Williams wanted the rest of his money. Callie Williams tried to keep him from taking the money because she thought that

he was going to buy more drugs with it. At that point she told Mr. Williams that she was breaking up with him because of his continued use of illegal drugs, specifically, crack cocaine.

Callie Williams testified that she told Williams that she did not want him (Williams) anymore because he had gotten back on drugs; that he was not doing better nor was he changing as he had promised her he would do. After several hours, Ms. Callie Williams left the area of Wayne Farm and went to her daughter's (Lakeisha Williams) home to sleep.

Later in the day, Williams' brother-in-law brought him over to Lakeisha Williams' house. At that point, Ms. Callie Williams and Williams drove to her house to pick up her children where they got off of the school bus. Ms. Callie Williams asked Williams for her cell phone which he had taken earlier the night before. Williams asked Callie Williams to come into the house with him but Callie refused because she was afraid of him because he was high on crack. Again, Callie Williams told Williams that she did not want him anymore because he had gotten back on crack cocaine.



Callie Williams testified that she then left and went back to her daughter's house. Approximately five or six times during that evening, March 19, 2004, Williams came to Lakeisha Williams' home wanting Callie Williams to go back with him. Each time, Ms. Callie Williams told him no. Callie Williams testified that she was afraid to return to her own house because Williams was high on crack and staying there.

Callie Williams next saw Williams on March 24, 2004, at her job at Wayne Farm, where Williams was also employed. Callie Williams stated that just before work started on the 24<sup>th</sup>, she encountered Williams in the break room. At that point, Williams said to Callie Williams "bitch, you don't ; I'll hurt you. I don't like what you did" (R. 29) as he grabbed the back of her smock. Callie Williams further stated that Williams stated to her that "he was going to make her lose her job". (R. 29) Ms. Callie Williams testified that she thought that this was in retaliation for her calling Mr. Williams parole officer. (R. 29)

Later that same evening a second incident occurred

while still at work. Williams came up behind Callie Williams and again grabbed her smock. According to Ms. Williams, her supervisor, Anthony, saw this incident occur.

A third incident occurred at work on March 24, 2004 at approximately 10:00 P.M. in the break room of Wayne Farm. Ms. Callie Williams stated that Williams again came up behind her and said "I went and told your mama what you did". Ms. Williams again told Williams to leave her alone and kept walking away.

After getting off of work on the March 24, 2004, Callie Williams called her daughter Lakeisha Williams, to come pick her up from work. Callie Williams went home with Lakeisha and was living there at the time on a temporary basis because David Donnie Williams was living in her house. Later that evening, Williams came over to Lakeisha's house where Callie Williams was staying and knocked on the door. No one would open the door for him.

Callie Williams next saw Williams on the 26<sup>th</sup> of March, 2004. He again came over to Lakeisha's house and knocked on the door and again no one would let him in. In

fact, Callie Williams stated that she did not speak at all because she did not want him (Williams) to know that she was in the house.

On March 27, 2004, Callie Williams again encountered Williams. Callie Williams had gone to her home to get her and her children a change of clothes when she saw that Williams' car was parked at her house. Ms. Williams did not enter the house but instead called the Union Springs police because she had signed a "trespass" against Williams on March 24, 2004, which meant that he was not to come back on her property.

When the police arrived, they went in the house and found Williams sleeping. They woke him up and made him leave. Later that same day, March 27<sup>th</sup>, Callie Williams went to a restaurant, "Smokey O's" to get some food. While Ms. Williams, was in the restaurant ordering some food, Williams came inside and approached Callie Williams. Ms. Williams testified that Williams told her "bitch, I don't like what you did to me"... (R. 40) Ms. Williams had ordered her food, paid for it and then walked out of the restaurant. Mr. Williams followed directly behind her. Ms. Callie Williams testified that

as she was getting into her car Williams told her "bitch, I will kill you". Ms. Williams testified that her response was "Donnie if you are gonna do it, do it right here. I'm tired of you threatening my life". (R. 41) At that point, Mr. Williams got in his car and left.

The next time that Ms. Callie Williams saw David Donnie Williams was at her house on March 30, 2004. Lakeisha Williams and her child had taken Callie Williams to her house to pick up her (Callie's) daughter, Narkesha, after school. The school bus drops Narkesha off in front of Callie Williams residence each day. When Ms. Williams arrived her daughter was not there. About two minutes later Williams pulled up across the road with the eight year old daughter of Callie Williams (Narkesha Williams) in his car.

Ms. Callie Williams pulled across the road to where Mr. Williams and the child were. Williams got out of the car holding the child's (Narkesha) hand, preventing her from coming to her mother, Ms. Callie Williams. Callie Williams did not get out of the car but her grandson accidentally opened the backdoor. Ms. Williams said that

Williams told her "bitch, I don't like what you did to me and pulled my sweatshirt trying to get me out of the car". (R. 44) Callie Williams further stated that David Donnie Williams at that point said he would kill her. Williams let the child go and she got into the car with her mother, Callie Williams, and they left.

Ms. Callie Williams went to the Union Springs Police Department and filed a report of the incident on March 30, 2004.

On April 17, 2004, Callie Williams and her 14 year old son Quadarius, had gone to her house to wash clothes. She was still not living there because she was afraid of Williams. Ms. Williams and Quadarius drove to the AG grocery which is located one block from their house. The vehicle driven by Ms. Callie Williams was a white Plymouth Lancer owned by her daughter, Lakeisha, and is well known by Williams.

When Ms. Callie Williams went into the AG grocery store, she stated that she did not see Williams or his car anywhere around. After purchasing some orange juice, she and Quadarius came out of the store and started

toward their car. They saw that Williams had backed into the space next to her car. Another man by the name of Anthony Blakeley was in the car with Mr. Williams. Ms. Williams stated that she paused for a minute because she was scared". (R. 51) As she was getting into her car, Williams said "bitch, I don't like what you did to me". Ms. Williams told Mr. Williams to leave her alone. At that point, Ms. Callie Williams' son, Quadarius, ask Williams, "why don't you leave my momma alone?" to which Mr. Williams responded "shut up before I fuck you up". Ms. Williams told her son to not say anything else and get in the car. Ms. Williams stated that at that point David Donnie Williams said that "if you mess around with me, I'd rather see you in heaven or hell". (R. 51) Williams drove away at that point.

When Ms. Callie Williams left the store and entered the roadway she saw Mr. Williams coming up behind her in his car very fast. She called the police on her phone and the police arrived almost immediately. The police attempted to pull Williams over and he fled at a high rate of speed. A police chase ensued.

Later that same day, April 17, 2004, Callie Williams

filed an incident report with the Union Springs Police Department against Williams. A statement was taken from Callie Williams wherein she related the incident that she and her son, Quadarius, had encountered with David Donnie Williams at the AG grocery store.

Statement of the Standard of Review

The standard of review in determining the sufficiency of the evidence to sustain a conviction, is that a reviewing court must accept as true all evidence introduced by the State, accord the State all legitimate inferences therefrom, and consider all evidence in a light most favorable to the prosecution. *Faircloth v. State*, 471 So.2d 485 (Ala.Crm. App. 1984). The function of the Court is to determine whether there is legal evidence from which a rational finder of fact could have, by fair inference, found the defendant guilty beyond a reasonable doubt. *Davis v. State* 598 So.2d 1054 (Ala.Crm. App. 1992). In reviewing a conviction based on circumstantial evidence, this court must view that evidence in the light most favorable to the prosecution. The test to be applied is whether the jury might reasonably find that the evidence excluded every reasonable hypothesis except that of guilt; not whether such evidence excludes every reasonable hypothesis but guilt, but whether a jury might reasonably so conclude.



*United States v. Black*, 497 F.2d 1039 (5<sup>th</sup> Cir. 1974);

*United States v. McGlamory*, 441 F.2d 130 (5<sup>th</sup> Cir. 1969);

*Clark v. United States*, 293 F.2d 445 (5<sup>th</sup> Cir. 1961).

#### Summary of the Argument

The State's failure to produce credible witnesses in addition to the insufficiency of the State's evidence requires that Mr. David Donnie Williams conviction be reversed and his sentence vacated based on the insufficiency of evidence on which to sustain a conviction.

### Argument

At trial, Ms. Callie Williams was the State's first witness and took the witness stand testifying as to the facts previously set forth in the Statement of Facts.

The State next called Ms. Johnnie Baker as their 2<sup>nd</sup> witness. Ms. Baker is a Security Guard employed at Wayne Farm in Union Springs, Alabama. Her testimony was that Williams had been an employee of Wayne Farm at some point because she recognized his face but never knew his name until his employment was terminated. At that point, a note was sent to her post in the Guard Shack that David Williams was not to be allowed back on company property. (R. 135) Ms. Baker further testified that she had seen Williams in the parking lot of Wayne farm property. The third (3<sup>rd</sup>) time this occurred after the note was posted, Baker stated that she went out to the parking lot to advise Williams to stay off of the property. (R. 138) Baker stated that Williams did ask about Callie Williams

and complied with Ms. Baker's instructions to leave the premises. Mr. Williams complied without incident. Ms. Baker did testify that she later saw Mr. Williams drive by her post at the Guard Shack on the roadway in front of Wayne Farm several times, but that he never came back on Wayne Farm property. During cross examination of Ms. Baker by counsel for Williams, counsel asked "You never saw him stalking this young lady; is that not correct?" Ms. Baker answered "it depends on what you mean by stalking". (R. 154 ) Further, Ms. Baker stated in her testimony that:

- " Q. April 17, 2004. You weren't around Ms. Callie Williams on April 17, 2004 were you?
- A. I don't know unless she passed through the Guard Shack coming to work and I had to check her ID.
- Q. Did you see Ms. Callie Williams and Mr. David Donnie Williams together on April 17, 2004?
- A. I don't know.
- Q. Now that's the date that the State of Alabama contends that my client stalked Ms. Williams. You didn't see him stalking Ms. Williams on April 17, 2004, did you?
- A. Just because I didn't see it, maybe someone else did. I don't know what

day was April 17<sup>th</sup>. "

(R. 166)

" Q. So as far as the ladies and gentlemen of the jury are concerned, April 17, 2004, you never saw Mr. David Donnie Williams stalk Callie Williams; isn't that correct? Yes or no?

A. Yeah, you are correct. I can't say what date. I can't say I seen him stalking her at all."

(R. 166-167)

The third witness called by the State was Johnny Taylor. Taylor who is a convicted felon with convictions for Theft of Property, a crime of moral turpitude. Mr. Taylor testified that Williams got him to testify in front of the Parole Board that he, Mr. Taylor, was at the AG grocery store on April 17, 2004, and that "... he was sitting in the car, and the guy that arrived with him went inside the store, and when he got ready to come out of the store, Ms. Williams followed the guy out the store, and Ms. Williams started arguing with him."

(R. 176-177)

Mr. Taylor recanted that statement in his testimony. Mr. Taylor bears no credibility as a witness because according to himself, he lied to the Parole Board and now

has changed his story for the District Attorney. However, in later testimony, Mr. Taylor stated that "I don't know noting about him stalking her." (R. 192)

The State's fourth witness was Mr. Wilbert Jernigan, the Clerk of Court for Bullock County, Alabama. Mr. Jernigan could not offer any evidence of the charges against Mr. Williams, as shown by his testimony:

Q. Now just for clarification, you would agree, Mr. Jernigan, you are not here to testify to the ladies and gentlemen of the jury that I know that Mr. David Donnie Williams committed stalking against Ms. Callie Williams because, first of all, you would agree, you never observed that happening yourself?

A. No sir.

Q. Okay. And furthermore, you never heard those events, alleged events, occur as they were unfolding as well; is that correct?

A. No sir, I did not."

(R. 220)

The State's fifth witness was Narkesha Williams, the eight-year old daughter of Callie Williams. On direct examination by the State, Narkesha Williams testified

that she heard Williams say the "B" word. (R. 252) Narkesha further testified that when Williams picked her up after school, that she, Narkesha willingly got into the car with Williams. (R. 262) Also, Narkesha testified that her mother, Callie Williams, was also cursing at Williams in the incident where Narkesha got into the car with Williams after school. (R. 264)

The States' sixth witness was Quadarius Williams, Callie Williams' 14-year old son. Although Quadarius Williams' testimony mirrored that of his mother Callie Williams regarding the events of April 17, 2004 at the AG grocery store, Quadarius admitted in his testimony that "he does not like Donnie Williams". (R. 284) (Emphasis added) Furthermore, Quadarius testified that his mother Callie Williams had gone over his testimony with him about 50 times to prepare him for court and to help him learn his story. (R. 288-289) On re-cross examination by counsel for the defendant, Quadarius again admitted that he had memorized his testimony.

" Q. And so when you are on the stand today, you don't have a problem

telling the ladies and gentlemen of the jury what happened because your momma made sure you memorized that by going over it day in and day out; is that right?

A. Yes. "

(R. 303-304)

And again on re-cross by counsel for the defendant, Quadarius testified that they were out to get David Donnie Williams and send him to prison.

" Q. Now did they tell you they (Callie Williams mother and prosecutor sic) were out to get David?

A. Yeah.

Q. You know David is on trial, right?

A. Yes.

Q. And they told you they was out to get David; is that right?

A. Yes.

Q. And they told you that they was out to get David and they was going to try to send David to prison or jail, is that right?

A. Yes.

Q. And they told you they needed your help; am I right about that?

A. Yes.

Q. And you love your mama; am I right about that?

A. Yes.

Q. So when your mama tells you, we going to get David, ans she tells you, remember to say this, that's what you going to do; am I right about that? It's okay to tell the truth. That's what you are going to say; isn't that right? You are keeping your commitment to mama in helping to get David; am I right about that?

A. Yes.

Q. And that's why you are here; am I right about that?

A. Yes. "

(R. 304-306)

On redirect examination by the prosecution Quadarius Williams further testified that they were out to get David Donnie Williams.

Q. Quadarius, when did I tell you we were out to get David Donnie Williams? Did I tell you that this morning? Did I tell you that yesterday? I have never told you that, have I? It's okay for you to tell the truth. I have never told



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you that we were out to get David Donnie Williams, did I? I know you told him one thing, but look over there. Don't even look at me. Tell the ladies and gentlemen of the jury the truth, because they need to know. Did I tell you that we were out to get David Donnie Williams?

A. Yes.

Q. When? Think back and tell me when. I want you to take as much time as you need, and I know you can't remember everything and I know you are answering his questions because you think you got to say - you are answering questions because he is being real polite; isn't that right? But I want you to tell them when I told you we were out to get David Donnie Williams. Can you remember that?

A. No. "

(R. 306)

The seventh witness called by the State was Anthony Blakeley. Mr. Blakeley testified that he was in the car (Emphasis added) with David Donnie Williams on April 17, 2004, the date the State alleges that Williams stalked Callie Williams. Mr. Blakeley testified that he did not hear Williams make any kind of threats to Callie Williams or to her son, Quadarius Williams. Mr. Blakeley further

testified that he was in the car with Williams and he did not hear Williams tell Callie Williams that he would "kill her bitch". (R. 314) The only other testimony Blakeley offered at the direction of the prosecution was that they were in a high speed car chase with the Union Springs Police Department on that same day, shortly after leaving the AG grocery store.

On cross examination by counsel for the defendant, Mr. Blakeley stated that it was his idea to stop at the AG grocery and not David Donnie Williams. (R. 328)

The State called its eight witness, Lt. Durwood Freeman of the Union Springs Police Department. Lt. Freeman's testimony was to that of the high speed chase involving Williams on April 17, 2004 and his testimony corroborated the fact that Anthony Blakeley was in the car with Williams. No testimony was solicited by the prosecutor or offered by the witness to substantiate the stalking charge.

The ninth witness called by the State was Lakeisha Williams, the 21-year old adult daughter of Callie

Williams. Ms. Narkeisha Williams could not testify to the events of April 17, 2004 which occurred at the AG grocery store as she was not present. She however, did testify to almost a mirror image of the remainder of her mother's (Callie Williams) testimony regarding the other issues.

In summary, the testimony of the witnesses for the State did not prove the State's case beyond a reasonable doubt. Starting with Ms. Baker, the Security Guard, she could not testify that she had ever seen Williams stalk Callie Williams. Also, Johnny Taylor stated that he had lied before to the Pardon and Parole Board on Williams behalf. However, Taylor has been convicted of crimes of moral turpitude and as such he has no credibility. Furthermore, Taylor offered no evidence of stalking on the part of Williams.

Mr. Jernigan was called by the State and did not offer any testimony or evidence of stalking on the part of Williams. The younger children of Callie Williams, Quadarius (14) and Narkeisha (8), both offered testimony that was favorable to Williams' defense. Narkeisha stated that she had heard her mother and Williams cursing

each other during quarrels and Quadarius testified that his mother and the prosecutor had helped him memorize his testimony so that they could get David Donnie Williams and send him to prison and that they needed his help to do so. (Emphasis added)

Anthony Blakeley testified that he was in the car with Williams at the time the alleged stalking took place and that at no time did he ever hear any type of threat made by Williams. Additionally, Lt. Freeman testified that his only involvement was that of a high speed chase with Williams concerning traffic violations; that he never observed any stalking by Williams.

In fact, the only witness, other than Callie Williams herself, who gave any type of testimony favorable to the State was Lakeisha Williams, who is the adult (21-year old) daughter of Callie Williams, and her testimony closely mirrored that of her mother.

As such, the only conclusion that can be derived from these facts is that a reasonable jury could not have convicted Williams based on such insufficient evidence as was presented at trial. It is clear that the evidence was of such an insufficient degree that Williams is due a

reversal because the jury's decision was completely contrary to the great weight of the evidence.

#### Conclusion

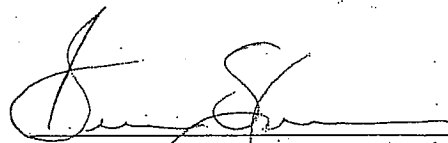
For the foregoing reasons and based on the foregoing authority and testimony, the Appellant believes that the evidence produced at trial is woefully insufficient to support a conviction for "Stalking". The Appellant respectfully requests that his conviction be reversed and his sentence vacated by this Honorable Court.

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Certificate of Service

I hereby certify that I have served a copy of the foregoing brief and argument of Appellant by placing same in the United States mail, postage prepaid, and properly addresses on this the 4<sup>th</sup> day of August, 2005, upon the following:

Honorable Troy King  
Alabama Attorney General  
11 South Union Street  
3<sup>rd</sup> Floor  
Montgomery, AL 36130-0061

  
Gene Spencer (SPE046)  
Attorney for Appellant

CC 04 144.60  
ID YR NUMBER

(To be completed  
by Court Clerk)

50

# IN FORMA PAUPERIS DECLARATION

IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

[Insert appropriate court]

DAVID DONNIE WILLIAMS

(Petitioner)

vs.

STATE OF ALABAMA

(Respondent(s))

## DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

David Donnie Williams

I, David Donnie Williams, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes \_\_\_\_\_ No X

a. If the answer is "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

N/A

b. If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received.

N/A

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession, or other form of self-employment?

Yes \_\_\_\_\_ No X

b. Rent payments, interest, or dividends?

Yes \_\_\_\_\_ No X

c. Pensions, annuities, or life insurance payments?

Yes \_\_\_\_\_ No X

d. Gifts or inheritances?

Yes \_\_\_\_\_ No X

e. Any other sources?

Yes \_\_\_\_\_ No X

4-11-06

In forma pauperis

GRANTED

BJ Selt

If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months.

Not applicable.

3. Do you own cash, or do you have money in a checking or savings account?

Yes X No       

(Include any funds in prison accounts.)

If the answer is "yes", state the total value of the items owned.

(See Certified Statement Below)

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes        No X

If the answer is "yes", describe the property and state its approximate value.

Not applicable.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

NONE

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.  
March 22, 2006

Executed on \_\_\_\_\_  
(Date)

Daniel Williams  
Signature of Petitioner AIS 169189

### CERTIFICATE

I hereby certify that the petitioner herein has the sum of \$ .034 on account to his credit at the institution where he is confined. I further certify that petitioner likewise has the foregoing securities to his credit according to the records of said ST. CLAIR CORR. FAC. institution:

\* NO TRANSACTIONS AVAILABLE FOR PAST 12 MONTHS.

3/22/06  
DATE

Lydia Peoples, Account Clerk  
AUTHORIZED OFFICER OF INSTITUTION



MAR. 22, 2006

USER: LYDIA PEOPLES  
COMPUTE AVERAGE DAILY BALANCE

INMADB

ENTER THE INMATE'S AIS NUMBER ===&gt; 169189

ENTER THE 'AS OF' DATE (CCYYMMDD) ===&gt; 20060322

NO RECORDS FOUND WITHIN THE LAST 12 MONTHS  
PRESS ENTER TO CONTINUE

IN THE CIRCUIT COURT OF BULLOCK COUNTY

FILED IN OFFICE

DAVID DONNIE WILLIAMS, AIS#169189, )

APR 18 2006

Petitioner, )

CLERK-REGISTER, BULLOCK CO., ALA.

Vs. )

CASE NO.: 2004-144.60

STATE OF ALABAMA, )

Respondent )

MOTION TO DISMISS PETITION FOR  
RELIEF FROM CONVICTION OR SENTENCE  
(PURSUANT TO RULE 32)

Comes now the State of Alabama, by and through its Assistant District Attorney,  
Boyd Whigham, and says as follows:

1. The pending Petition dated March 28, 2006 and in forma pauperis status granted April 11, 2006, states that the ground for the Petition was a follows:

ISSUES PRESENTED FOR REVIEW

A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

B. The court was without jurisdiction to render the judgment or to impose the sentence.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

2. The Petitioner attached a 4 page brief with attachment from the brief in the Court of Criminal Appeal and portions of the transcript.

3. The Petitioner raises the issue that the Trial Judge on Notice from the jury that they could not reach a decision and the Trial Judge sent word back to the jury "to keep deliberating".

4. This response was proper and within the discretion of the Trial Judge. The Trial Judge is not required to bring the jury back into the Court for any instruction, when he merely instructs them by a note to keep deliberating.

5. The next allegation by Petitioner is that it was ineffective assistance of counsel for Petitioner's Trial counsel not to have objected. The issue is precluded pursuant to Rule 32.2(a)(5) which could have been raised on appeal. Since counsel were not the same attorney. Even if not precluded it is not a valid issue because the trial courts action was proper.

6. Petitioner claim that the jury verdict form found him not guilty of a "lesser included offence" relating to the felony charge of stalking. This is not the circumstances of the trial.

7. Petitioner was charged in case number CC-2004-145 with Domestic Violence 3<sup>rd</sup> Degree/Harassment and in case number CC-2004-144 with stalking and both case were tried together and the Petitioner was found not guilty of "harassment/domestic violence". See Exhibit "A".

8. The Petitioner was represented by capable counsel on appeal and nothing in the record would indicate that appeal counsel was ineffective. The issue that the Petitioner sets forth is "ineffective assistance of counsel", which fails to meet the requirements of Rule 32.6(b). The grounds raised as to ineffective assistance of counsel fail to rise to the level that the courts have recognized as ineffective.

9. In order to constitute cause sufficient to overcome procedural default, a counsel's performance must be constitutionally ineffective under the standards of Strickland v. Washington, 466 U. S. 6689, 104 S. Ct. 2052, 80L. Ed 2d 674 (1984). Jackson v. Herring, 42 F. 3d 1350, 1358 (11<sup>th</sup> Cir. 1995); Devier v. Zant, 3F. 3d 1445, 1456 (11<sup>th</sup> Cir. 1993); Smelchor v. Attorney General of Alabama, 947 F. 2d 1472, 1475 (11<sup>th</sup> Cir. 1991).

In Strickland the Court set forth the text for determining whether counsel's performance "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id., 466, 104 S. Ct. at 2064. This test has two prongs:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixty Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive defendant of a fair trial, a trial whose result is reliable.

Under Strickland, counsel's performance is measured for "reasonableness under professional prevailing norms".

10. The claim of ineffective assistance of counsel is without merit.

*"When reviewing whether an attorney is effective, courts 'should always presume strongly that counsel's performance was reasonable and adequate'." Rogers v. Zant, 13 F. 3d 384, 386 (11<sup>th</sup> Cir. 1994).*

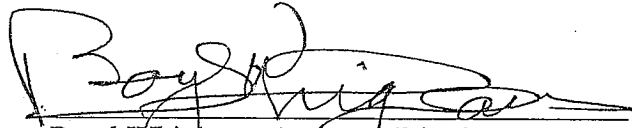
The court has full knowledge of the Attorney's performance, which was reasonable and adequate.

11. The Petitioner fails to state a claim upon which relief may be granted.

12. No material issues of fact or law exist which would entitle the Petitioner to relief.

That the Petition should be dismissed or in the alternative each ground should be denied.

Respectfully submitted this 18 day of April, 2006.

  
Boyd Whigham, Assistant District Attorney  
Post Office Box 61  
Eufaula, AL 36027

CERTIFICATE OF SERVICE

I hereby certify that I have this 18 day of April, 2006, served a copy of the above and foregoing pleading on David Donnie Williams AIS # 169189, by placing a copy of same in the United States Mail, postage prepaid and addressed to him in care of St. Clair Correctional Facility, 1000 St. Clair Road, Springville, Alabama 35146.

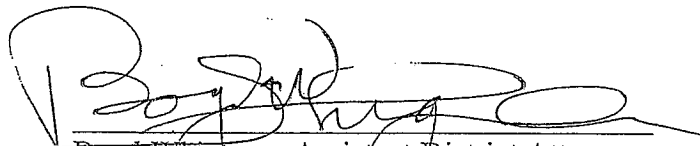
  
Boyd Whigham, Assistant District Attorney

Exhibit "A"

57

NO.: \_\_\_\_\_

G. J. No. BF-04-035

A TRUE BILL, presented to the judge Presiding in open Court by the Foreperson of this Grand Jury, and filed in open court this \_\_\_\_ day of \_\_\_\_\_.

Leon Battle  
Grand Jury Foreman

\_\_\_\_\_  
Clerk of the Circuit Court  
of Bullock County  
Third Judicial Circuit

10/19/04  
Date

## INDICTMENT

THE STATE OF ALABAMA

vs.

DAVID DONNIE WILLIAMS

Address: 505 JOHNSON STREET, UNION SPRINGS, AL 36089  
alias

None Reported

## CHARGES:

DOMESTIC VIOLENCE THIRD DEGREE - HARASSMENT(13A-6-132)

CLASS

TYPE

A

M

## WITNESSES:

CALLIE WILLIAMS, 1010 MLK BLVD, LOT #2, UNION SPRINGS, AL 36089  
LAKISHA WILLIAMS, 1010 MLK BLVD, LOT 2, UNION SPRINGS, AL 36089

Previous Bond \$ \_\_\_\_\_ Bail fixed at \$ \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Judge Presiding

THE STATE OF ALABAMA  
Bullock COUNTY

CIRCUIT COURT

2004

BOYD WHIGHAM  
DISTRICT ATTORNEY  
THIRD JUDICIAL CIRCUIT

NO.: \_\_\_\_\_


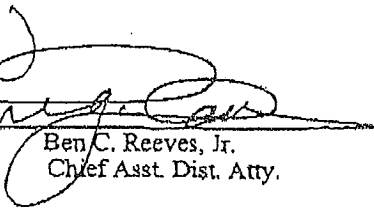
G. J. No.BF-04-035

THE STATE OF ALABAMA, Bullock COUNTY  
Circuit Court - Third Judicial Circuit

## COUNT 1

The Grand Jury of said county charge that, before the finding of this indictment, DAVID DONNIE WILLIAMS, whose name is otherwise unknown to the Grand Jury, did on or about March 30, 2004, commit the crime of Harassment (Section 13A-11-8 of the Code of Alabama), with intent to harass, annoy, or alarm another person, to-wit: CALLIE WILLIAMS, did direct a threat, verbal or nonverbal, to-wit: grabbed her by her clothes and verbally threatened her, with the intent to carry out the threat, toward another person, to-wit: CALLIE WILLIAMS, a reasonable person and target of the threat, causing her to fear for her safety, with the victim being a current or former spouse, parent, child, a person with whom he/she has a child in common, a present or former household member, or a person whom he/she has or had a dating relationship, in violation of Section 13A-6-132 of the Code of Alabama,

against the peace and dignity of the State of Alabama.

  
\_\_\_\_\_  
BOYD WHIGHAM  
District Attorney  
Third Judicial Circuit  
\_\_\_\_\_  
Ben C. Reeves, Jr.  
Chief Asst. Dist. Atty.

IN THE CIRCUIT COURT OF BULLOCK COUNTY **FILED IN OFFICE**

DAVID DONNIE WILLIAMS, AIS#169189, )

APR 25 2006

Petitioner, )

CLERK-REGISTER, BULLOCK CO., ALA.

Vs. )

CASE NO.: 2004-144.60

STATE OF ALABAMA, )

Respondent )

ORDER

This matter coming before the Court on Rule 32 Petition and response by the State, the Court makes findings of facts and conclusion of law as follows:

The Court finds that the note from the jury that they could not reach a decision and the response by the Trial Court was proper. The failure of the Trial counsel to object to the courts handling of this matter does not show ineffective assistance of trial counsel.

The Court further finds that ineffective assistance of trial counsel is precluded under the provisions of Rule 32.2(a)(5) in that appeal counsel could have raised this matter on appeal.

The Court finds that the Petition is without merit, in that the Petitioner was represented by an experienced attorney, and the records does not support the allegations of ineffective assistance of counsel. Ineffective assistance of appeal counsel as it relates to the jury verdict on two cases on one verdict form is not error and does not indicate ineffective assistance of counsel.

The Petitioner has failed to meet his burden of proof as provided by Rule 32.3.



It is therefore, **ORDERED** and **ADJUDGED** that the Petition be dismissed pursuant to the provisions of Rule 32.3(a)(5) and 32.3. All issues are hereby **DISMISSED** pursuant to Rule 32.7(d), Alabama Rules of Criminal Procedure.

**ORDERED** and **ADJUDGED** this 25<sup>th</sup> day of April, 2005.

A handwritten signature in black ink, appearing to read "Bt Smithart", written over a horizontal line.

Burt Smithart, Circuit Court Judge

FILED IN OFFICE

APR 27 2006

IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

DAVID DONNIE WILLIAMS, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO. CC-04-144.60  
 )  
 STATE OF ALABAMA, )  
 )  
 Respondent. )

CLERK-REGISTER, BULLOCK CO., ALA.

PETITIONER'S RESPONSE AS TO WHY  
HIS PETITION SHOULD NOT BE DISMISSED

Comes now, David Donnie Williams, proceeding pro se, and files his response as to WHY HIS PETITION SHOULD NOT BE DISMISSED.

DISCUSSION

A.

Specifically, the State asserts that the Petitioner's court's instruction issue was proper and within the discretion of the trial judge. However, this argument ignores the fact that the Petitioner argues that the circuit court improperly coerced the jury into returning a guilty verdict after the jury told the court that it was hopelessly dead-locked. Specifically, the Petitioner contends that the court's instruction violated the Supreme Court's holding in Ex parte Giles, 554 So.2d 1089 (Ala. 1987).

B.

Specifically, the State contends that the Petitioner's misdemeanor harassment/domestic violence issue was not a lesser-included offense of the greater offense of stalking. See Rule 2.2(a); Ex parte N.W., 748 So.2d 199 (Ala. 1999); see also

Brewster v. State, 875 So.2d 1230 (Ala.Crim.App. 2003)(holding that, factual allegations contained in postconviction-relief petition were taken as true, where State's response to petition was general denial); King v. State, 881 So.2d 542 (Ala.Crim.App. 2002)(holding that allegations contained in petition for post-conviction relief had to be accepted as true, where State did not refute petitioner's allegations in its motion to dismiss); Grady v. State, 831 So.2d 646 (Ala.Crim.App. 2001)(holding that when the State does not respond to a petitioner's allegations in a petition for postconviction relief, the unrefuted statement of facts must be taken as true); Scroggins v. State, 827 So.2d 878 (Ala.Crim.App. 2001)(holding that when the state does not respond to a postconviction relief petitioner's allegations, the unrefuted statement of facts must be taken as true); Whitaker v. State, 686 So.2d 1262 (Ala.Crim.App. 1995)(holding that factual allegations in petition for post-conviction relief would be taken as true, where state's motion to dismiss petition did not refute allegations); Rice v. State, 682 So.2d 484 (Ala.Crim.App. 1995)(holding that defendant's allegations in his petition for postconviction relief must be accepted as true where State failed to properly address merit of arguments in defendant's petition); and Monroe v. State, 659 So.2d 975 (Ala.Crim.App. 1994)(holding that because state's response to petition for postconviction relief did not specifically address grounds supporting petitioner's claim, petition was

meritorious on its face, thus warranting evidentiary hearing).

C.

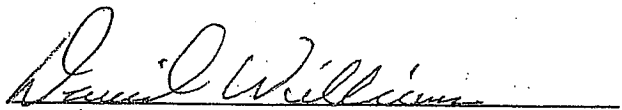
The State maintains in its motion to dismiss that the issue that the Petitioner sets forth is "ineffective assistance of counsel," which fails to meet the requirements of Rule 32.6(b). However, that argument ignores the obvious purpose behind the assignment of the requirements of Rule 32.6(b). Rule requiring petition for post-conviction relief to contain specific statement of grounds upon which relief is sought was inapplicable since petitioner's allegations in memorandum of law attached to petition appeared to be meritorious on their face. Nunley v. State, 722 So.2d 802 (Ala.Cri.App. 1998).

In further response to the State's motion to dismiss, the Petitioner re-adopts and incorporates the arguments and issues set forth in its initial memorandum as if fully set out herein.

#### CONCLUSION

The Court should grant the petition in this case since it is clear that the Petitioner's conviction is void and that he was denied effective assistance of counsel.

Respectfully submitted,

  
David D. Williams  
AIS #169189, G2-C-132  
St. Clair Correctional Facility  
1000 St. Clair Road  
Springville, AL 35146-5582

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon the following person on the 21st day of April, 2006:

Honorable Boyd Whigham  
Assistant District Attorney  
Post Office Box 61  
Eufaula, AL 36027

  
\_\_\_\_\_  
David D. Williams

DAVID DONNIE WILLIAMS,	)	IN THE CIRCUIT COURT OF
	)	
Appellant,	)	BULLOCK COUNTY, ALABAMA
	)	
vs.	)	
	)	
STATE OF ALABAMA,	)	CASE NO. CC-04-144.60
	)	
Appellee.	)	

NOTICE OF APPEAL TO  
THE COURT OF CRIMINAL APPEALS OF ALABAMA

Notice is hereby given that David Donnie Williams appeals to the above named court from this Court's dismissal of his Petition for Relief from Conviction or Sentence entered on April 25, 2006.

In addition, David Donnie Williams requests that his appeal be in forma pauperis, and notes that he is incarcerated in the State Penal System and that the Court has determined that Petitioner is indigent, and he was allowed to proceed in forma pauperis.

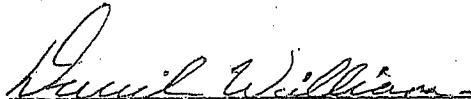
Respectfully submitted this the 2nd day of May, 2006.



David D. Williams  
Pro Se, Appellant  
AIS #169189-G2-C-132  
1000 St. Clair Road  
Springville, AL 35146-5582

CERTIFICATE OF SERVICE

Comes now the Petitioner and hereby certifies he has served a copy of the foregoing document upon opposing counsel on this the 2nd day of May, 2006.



David D. Williams  
Pro Se, Appellant

State of Alabama Unified Judicial System Form ARAP- 26 (front) 8/91.	<b>COURT OF CRIMINAL APPEALS</b> <b>DOCKETING STATEMENT</b>	Criminal Appeal Number _____
--	--	---------------------------------

**A. GENERAL INFORMATION:**

☒ CIRCUIT COURT    ☐ DISTRICT COURT    ☐ JUVENILE COURT OF \_\_\_\_\_ **BULLOCK** COUNTY  
**DAVID DONNIE WILLIAMS**, Appellant

V: ☒ STATE OF ALABAMA    ☐ MUNICIPALITY OF \_\_\_\_\_

Case Number <b>CC-04-144-60</b>	Date of Complaint or Indictment <b>03/28/06 (Complaint)</b>	Date of Judgment/Sentence/Order <b>04/25/06 (Order)</b>
Number of Days of Trial/Hearing "Q" Days	Date of Notice of Appeal Oral: _____	Written: <b>05/02/06</b>
Indigent Status Requested: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No      Indigent Status Granted: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		

**B. REPRESENTATION:**

Is Attorney Appointed or Retained? <input type="checkbox"/> Appointed <input type="checkbox"/> Retained.      If no attorney, will appellant represent self? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Appellant's Attorney (Appellant if pro se) (Attach additional pages if necessary) <b>David Donnie Williams (Pro Se)</b>	
Address <b>1000 St. Clair Rd.</b>	City <b>Springville</b>
Telephone Number <b>(205) 467-6111</b>	
State <b>Alabama</b> Zip Code <b>35146-55582</b>	

**C. CODEFENDANTS:** List each CODEFENDANT and the codefendant's case number.

Codefendant <b>NONE</b>	Case Number
Codefendant	Case Number
Codefendant	Case Number

**D. TYPE OF APPEAL:** Please check the applicable block.

- |  |  |  |
|--|--|--|
| 1 <input type="checkbox"/> State Conviction                  | 4 <input type="checkbox"/> Pretrial Order        | 7 <input type="checkbox"/> Juvenile Transfer Order |
| 2 <input checked="" type="checkbox"/> Post-Conviction Remedy | 5 <input type="checkbox"/> Contempt Adjudication | 8 <input type="checkbox"/> Juvenile Delinquency    |
| 3 <input type="checkbox"/> Probation Revocation              | 6 <input type="checkbox"/> Municipal Conviction  | 9 <input type="checkbox"/> Habeas Corpus Petition  |
| 10 <input type="checkbox"/> Other (Specify) _____            |  |  |

**E. UNDERLYING CONVICTION/CHARGE:** Regardless of the type of appeal checked in Section D, please check the box beside each offense category for which the appellant has been convicted or charged as it relates to this appeal. Also include the applicable section of the Code of Alabama for State convictions.

- |   |  |  |
|---|--|--|
| 1 <input type="checkbox"/> Capital Offense - § _____                  | 6 <input type="checkbox"/> Trafficking in Drugs - § _____            | 11 <input type="checkbox"/> Fraudulent Practices - § _____   |
| 2 <input type="checkbox"/> Homicide - § _____                         | 7 <input type="checkbox"/> Theft - § _____                           | 12 <input type="checkbox"/> Offense Against Family - § _____   |
| 3 <input type="checkbox"/> Assault - § _____                          | 8 <input type="checkbox"/> Damage or Intrusion to Property - § _____ | 13 <input type="checkbox"/> Traffic - DUI - § _____  |
| 4 <input type="checkbox"/> Kidnapping/Unlawful Imprisonment - § _____ | 9 <input type="checkbox"/> Escape - § _____                          | 14 <input type="checkbox"/> Traffic - Other - § _____  |
| 5 <input type="checkbox"/> Drug Possession - § _____                  | 10 <input type="checkbox"/> Weapons/Firearms - § _____               | 15 <input checked="" type="checkbox"/> Miscellaneous (Specify):<br><b>Stalking</b> - § <b>13A-6-90</b> |

**F. DEATH PENALTY:**

Does this appeal involve a case where the death penalty has been imposed? ☐ Yes ☒ No

**G. TRANSCRIPT:**

- Will the record on appeal have a reporter's transcript? ☐ Yes ☒ No
- If the answer to question "1" is "Yes," state the date the Reporter's Transcript Order was filed. \_\_\_\_\_ (Date)
- If the answer to question "1" is "No":
  - Will a stipulation of facts be filed with the circuit clerk? ☐ Yes ☒ No
  - Will the parties stipulate that only questions of law are involved and will the trial court certify the questions? ☐ Yes ☒ No

NOTE: If the appeal is from the district or juvenile court and the answer to question "1" is "No," then a positive

Form ARAP-26 (back) 8/91

## COURT OF CRIMINAL APPEAL DOCKETING STATEMENT

H. POST-JUDGMENT MOTIONS: List all post-judgment motions by date of filing, type, and date of disposition (whether by trial court order or by the provisions of Rules 29.1 and 24.4 (ARCrP)):

DATE OF FILING			TYPE OF POST-JUDGMENT MOTION	DATE OF DISPOSITION		
Month	Day	Year		Month	Day	Year
			N/A			

I. NATURE OF THE CASE: Without argument, briefly summarize the facts of the case.

Appellant was denied of Petition for Relief from Conviction or Sentence filed pursuant to Rule 32, Alabama Rules of Criminal Procedure. Appellant asserts that he was denied effective assistance of counsel and that the trial court had been without jurisdiction to adjudicate him guilty of Stalking.

J. ISSUE(S) ON APPEAL: Briefly state the anticipated issues that will be presented on appeal. (Attach additional pages if necessary.)

The trial court's dismissal of the Appellant's Petition for Relief from Conviction or Sentence.

K. SIGNATURE:

May 2, 2006

Date

  
Signature of Attorney/Party Filing this Form



State of Alabama Unified Judicial System Form ARAP- 1C 8/91	REPORTER'S TRANSCRIPT ORDER -- CRIMINAL See Rules 10(c) and 11(b) of the Alabama Rules of Appellate Procedure (A.R. App.P.)	Criminal Appeal Number _____
--	---	---------------------------------

TO BE COMPLETED BY COUNSEL FOR THE APPELLANT OR BY THE APPELLANT IF NOT REPRESENTED AND FILED WITH THE WRITTEN NOTICE OF APPEAL OR FILED WITHIN 7 DAYS AFTER ORAL NOTICE OF APPEAL IS GIVEN.

☒ CIRCUIT COURT ☐ DISTRICT COURT ☐ JUVENILE COURT OF BULLOCK COUNTY  
DAVID DONNIE WILLIAMS, Appellant

V. ☒ STATE OF ALABAMA ☐ MUNICIPALITY OF \_\_\_\_\_

Case Number <u>CC-04-144-60</u>	Date of Judgment/Sentence/Order <u>04/25/06 (Order)</u>
Date of Notice of Appeal Oral: _____ Written: <u>05/02/06</u>	Indigent Status Granted: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

PART 1. TO BE SIGNED IF THE APPEAL WILL NOT HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT NO REPORTER'S TRANSCRIPT IS EXPECTED AND THAT THE RECORD ON APPEAL SHALL CONSIST OF THE CLERK'S RECORD ONLY. IF THE APPEAL IS FROM DISTRICT COURT OR JUVENILE COURT, I ALSO CERTIFY (1) THAT A STIPULATION OF FACTS WILL BE INCLUDED IN THE CLERK'S RECORD AND THAT THE APPELLANT WAIVES HIS RIGHT TO A JURY TRIAL IF SO ENTITLED; OR (2) THAT THE PARTIES HAVE STIPULATED THAT ONLY QUESTIONS OF LAW ARE INVOLVED AND THAT THE QUESTIONS WILL BE CERTIFIED BY THE JUVENILE/DISTRICT COURT FOR INCLUSION IN THE CLERK'S RECORD (SEE RULE 28(A)(1), ALABAMA RULES OF JUVENILE PROCEDURE, AND §12-12-72, CODE OF ALABAMA 1975).

David Donnie Williams 05/02/06 David Donnie Williams  
Signature Date Print or Type Name

PART 2. DESIGNATION OF PROCEEDINGS TO BE TRANSCRIBED: Request is hereby made to the court reporter(s) indicated below for a transcript of the following proceedings in the above referenced case (see Rule 10(c)(2), Alabama Rules of Appellate Procedure (A.R. App.P.)):

MARK PROCEEDINGS REQUESTED:

COURT REPORTER(S)

- A. ☐ TRIAL PROCEEDINGS - Although this designation will include the judgment and sentence proceedings, a transcript of the organization of the jury and arguments of counsel must be designated separately.
- B. ☐ ORGANIZATION OF THE JURY - This designation will include voir dire examination and challenges for cause. Note that in noncapital cases the voir dire of the jury will not be recorded unless the trial judge so directs. (See Rule 19.4, ARCP.)
- C. ☐ ARGUMENTS OF COUNSEL - Note that in noncapital cases the arguments of counsel will not be recorded unless the trial judge so directs. (See Rule 19.4, ARCP.)

IN ADDITION TO ANY PROCEEDINGS DESIGNATED ABOVE, SPECIAL REQUEST IS HEREBY MADE TO INCLUDE THE FOLLOWING PROCEEDINGS IN THE REPORTER'S TRANSCRIPT PORTION OF THE RECORD ON APPEAL. (ATTACH ADDITIONAL PAGES IF NECESSARY):

ADDITIONAL PROCEEDINGS REQUESTED	DATE	COURT REPORTER(S)
D. _____	_____	_____
E. _____	_____	_____
F. _____	_____	_____
G. _____	_____	_____

IMPORTANT NOTICE: The court reporter who reported the proceedings for which a transcript is requested must be identified on this form to be effective. Additionally, it is important to note that the appellant may not be permitted to raise any issue on appeal relating to any proceedings in the case that are not specifically designated on this form for inclusion in the reporter's transcript. A general designation such as "all proceedings" is not sufficient. (See Rule 10(c)(2), A.R. App.P.)

PART 3. MUST BE SIGNED IF THE APPEAL WILL HAVE A COURT REPORTER'S TRANSCRIPT:

I CERTIFY THAT I HAVE DISTRIBUTED THIS FORM AS SET OUT BELOW. I ALSO CERTIFY (1) THAT I HAVE MADE SATISFACTORY FINANCIAL ARRANGEMENTS WITH EACH COURT REPORTER LISTED ABOVE FOR PREPARING HIS OR HER PORTION OF THE REPORTER'S TRANSCRIPT HEREIN REQUESTED; OR (2) THAT THE APPELLANT PROCEEDED AT TRIAL AS AN INDIGENT AND THAT THAT STATUS HAS NOT BEEN REVOKED; OR, (3) THAT THE APPELLANT HAS BEEN GIVEN PERMISSION TO PROCEED ON APPEAL IN FORMA PAUPERIS.

Signature \_\_\_\_\_ Date \_\_\_\_\_ Print or Type Name \_\_\_\_\_

DISTRIBUTION: Original filed with Clerk of Trial Court and copies mailed to: (1) Clerk of the Court of Criminal Appeals, (2) the District Attorney, (3) the Attorney General or the municipal prosecutor in lieu of the District Attorney.

69

NOTICE OF APPEAL TO THE ALABAMA COURT OF CRIMINAL APPEALS  
BY THE TRIAL COURT CLERK

David Donnie Williams

V.

☒

STATE OF ALABAMA

APPELLANT'S NAME

CITY OF

(as it appears on the indictment)

APPELLEE

Bullock

COUNTY

☒ CIRCUIT ☐ DISTRICT

☐ JUVENILE COURT OF

CIRCUIT/DISTRICT/JUVENILE JUDGE: Honorable L. Bernard Smithart

DATE OF NOTICE OF APPEAL: May 2, 2006

(NOTE: If the appellant is incarcerated and files notice of appeal, this date should be the date on the certificate of service, or if there was no certificate of service, use the postmark date on the envelope.)

INDIGENCY STATUS:

Granted Indigency Status at Trial Court:

Appointed Trial Counsel Permitted to Withdraw on Appeal:

Indigent Status Revoked on Appeal:

☒ Yes ☐ No

☐ Yes ☒ No

☐ Yes ☒ No

DEATH PENALTY:

Does this appeal involve a case where the death penalty has been imposed?

☐ Yes ☒ No

TYPE OF APPEAL: (Please check the appropriate block.)

☐ State Conviction

☐ Pretrial Appeal by State

☐ Juvenile Transfer Order

☒ Rule 32 Petition

☐ Contempt Adjudication

☐ Juvenile Delinquency

☐ Probation Revocation

☐ Municipal Conviction

☐ Habeas Corpus Petition

☐ Mandamus Petition

☐ Writ of Certiorari

☐ Other(specify)

IF THIS APPEAL IS FROM AN ORDER DENYING A PETITION (I.E., RULE 32 PETITION, WRIT OF HABEAS CORPUS, ETC.) OR FROM ANY OTHER ORDER ISSUED BY THE TRIAL JUDGE, COMPLETE THE FOLLOWING:

TRIAL COURT CASE NO.: CC 2004-144.60

DATE ORDER WAS ENTERED: April 25, 2006

PETITION: ☒ Dismissed ☐ Denied ☐ Granted

IF THIS IS AN APPEAL FROM A CONVICTION, COMPLETE THE FOLLOWING:

DATE OF CONVICTION:

DATE OF SENTENCE:

UTHFUL OFFENDER STATUS:

Requested: ☐ Yes ☐ No

Granted: ☐ Yes ☐ No

LIST EACH CONVICTION BELOW: (attach additional page if necessary)

1. Trial Court Case No. \_\_\_\_\_ CONVICTION: \_\_\_\_\_  
Sentence: \_\_\_\_\_
2. Trial Court Case No. \_\_\_\_\_ CONVICTION: \_\_\_\_\_  
Sentence: \_\_\_\_\_
3. Trial Court Case No. \_\_\_\_\_ CONVICTION: \_\_\_\_\_  
Sentence: \_\_\_\_\_

POST-JUDGMENT MOTIONS FILED: (complete as appropriate)

	Date Filed	Date Denied	Continued by Agreement To (Date)
<input type="checkbox"/> Motion for New Trial	_____	_____	_____
<input type="checkbox"/> Motion for Judgment of Acquittal	_____	_____	_____
<input type="checkbox"/> Motion to Withdraw Guilty Plea	_____	_____	_____
<input type="checkbox"/> Motion in Arrest of Judgment	_____	_____	_____
<input type="checkbox"/> Other	_____	_____	_____

COURT REPORTER(S):

ADDRESS:

APPELLATE COUNSEL:

ADDRESS:

APPELLANT: (IF PRO SE)

AIS# 169189

ADDRESS:

1000 St. Clair Road

Springville, AL 35146

APPELLEE (IF CITY APPEAL):

ADDRESS:

I certify that the information provided above is accurate to the best of my knowledge and I have served a copy of this Notice of Appeal on all parties to this action on this 4th day of May, 2006.

Wilbert M. Gernigan  
CIRCUIT COURT CLERK

AP 12-3 Letter of Transmittal of Notice of Appeal to the Court of Criminal Appeals by Trial Clerk Printed and for Sale by Roberts &amp; Son, Birmingham

LETTER OF TRANSMITTAL OF NOTICE OF APPEAL TO  
THE COURT OF CRIMINAL APPEALS BY  
TRIAL CLERKDavid Donnie Williams

Appellant

V.

STATE OF ALABAMA

Appellee

Offense Rule 32 PetitionSentence DismissedNotice of Appeal May 2, 2006

Date Filed

Judgement Entry April 25, 2006

Date Entered

- ☐ Oral notice of appeal has been given prior to or on the date of entry of the judgment of conviction in this cause,
- ☒ Written notice of appeal has been filed on the date indicated hereon (within 42 days from the entry of judgment or the order overruling a post conviction motion),

A certified copy of the entry of record of the oral notice of appeal or the written notice of appeal is forwarded herewith for filing with the Court of Criminal Appeals.

I certify that I have served a copy of this letter of transmittal along with a copy of the notice of appeal on each of the following:

1. Court Reporter (Name and address) \_\_\_\_\_
2. Defendant \_\_\_\_\_
3. Defendant's appellate counsel. (Name and address) \_\_\_\_\_
4. District Attorney \_\_\_\_\_
5. Attorney General \_\_\_\_\_

DATED this 17th day of May 2006

Wilbert M. Jernigan  
Circuit Clerk

71

CERTIFICATE OF COMPLETION AND  
TRANSMITTAL OF RECORD ON APPEAL  
BY TRIAL CLERK

David Donnie Williams

APPELLANT

V.

State Of Alabama

APPELLEE

TO: The Clerk Of the Court of  
Criminal Appeals of Alabama

CASE NO.: CC - 2004 - 144.60

DATE OF NOTICE OF APPEAL: 5-2-06

I certify that I have this date completed and transmitted herewith to the appellate court the record on appeal by assembling ~~XXXXXXXXXXXXXXXXXXXX~~ volumes of 200 pages each and one volume of 71 pages) the clerk's record and the reporter's transcript and that one copy each of the record on appeal has been served on the defendant and the Attorney General of the State of Alabama for the preparation of briefs.

I certify that a copy of this certificate has this date been served on counsel for each party the appeal.

DATED this 17<sup>th</sup> day of May, ~~19~~<sup>XX</sup> 2006

Wilbert M. Jennigan  
Circuit Clerk

Circuit Clerk

Bullock

County

*Jordan*

6/23/06  
(11)

FILED  
MAY 31 2006  
CLERK  
ALA COURT CRIMINAL APPEALS

CRIMINAL APPEALS NO. CR-05-1451

IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

DAVID DONNIE WILLIAMS,

Appellant,

vs.

STATE OF ALABAMA,

Appellee.

On Appeal from the Circuit Court of  
Bullock County, Alabama (CC04-144.60)

**Brief of the Appellant**

David Donnie Williams  
Pro Se, Appellant  
AIS #169189, G2-C-132  
1000 St. Clair Road  
Springville, AL 35146-5582

PENGAD 800-631-6989  
EXHIBIT  
I

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is not requested by the Appellant.

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STATEMENT OF THE CASE

Appellant, David Donnie Williams, appeals from a ruling of the Circuit Court of Bullock County, Alabama, Hon. L. Bernard Smithart presiding, dismissing the Appellant's Rule 32 petition.

In the instant case, the Appellant was indicted by the Bullock County Grand Jury in two separate indictments for one count of Stalking in violation of §13A-6-90, Ala. Code §13A-6-90 and for one count of Domestic Violence 3rd Degree/Harassment in violation of Ala. Code §13A-6-132. (C. 23,57) The two separate count indictments were then officially docketed as Bullock County Circuit Cases CC-2004-145 and CC-2004-144. (C. 19)

Pursuant to Rule 2.2(a) of ARCP a trial on the merits was held on November 22nd and 23rd of 2004, and a duly empaneled jury returned a verdict of guilty against the Appellant on the stalking charge, which is a "Class C" felony and, a verdict of not guilty on the harassment/domestic violence charge, which is a "Class A" misdemeanor. (C. 17-18)

On March 31, 2006, Appellant filed a Rule 32 petition in the Bullock County Circuit Court attacking his 2004 conviction for stalking. (C. 1) This petition was based on the petitioner's ineffective-assistance claims against trial and appellate counsel for their failure to properly preserve and raise claims on these grounds: (1) that the trial court erred in reacting to the jury's communication that it could not reach an unanimous verdict, and

(2) that the trial court was without jurisdiction to adjudge the petitioner guilty of the greater offense of stalking because he was acquitted of the lesser-included offense of harassment relating to that charge, in which the underlying lesser-included offense of harassment was used to establish an element of the stalking charge, i.e., that the accused had "intentionally and repeatedly followed or harassed" the victim. (C. 2-49)

The Honorable Burt Smithart dismissed the petition on April 25, 2006. (C. 59-60)

Appellant gave notice of appeal to the Alabama Court of Criminal Appeals on May 2, 2006. (C. 65-68)

STATEMENT OF THE ISSUE

— WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DISMISSING  
THE APPELLANT'S RULE 32 PETITION AS BARRED ON THE PROCEDURAL GROUNDS  
SPECIFIED IN RULE 32.7(d)?

STATEMENT OF THE FACTS

Appellant's Rule 32 petition, which was filed in the Circuit Court of Bullock County, Alabama on March 31, 2006, in which he attacked his 2004 conviction for stalking. (C. 1) In his supplemental memorandum in support of petition, including exhibits attached, the Appellant claimed that he was denied effective assistance of trial and appellate counsel for their failure to properly preserve and raise claims on these grounds: ((1) that the trial court erred in reacting to the jury's communication that it could not reach an unanimous verdict, and (2) that the trial court was without jurisdiction to adjudge him guilty of the greater offense of stalking because he was acquitted of the lesser-included offense of harassment relating to that charge, in which the underlying lesser-included offense of harassment was used to establish an element of the stalking charge, i.e., that the accused had "intentionally and repeatedly followed or harassed" the victim. (C. 2-49) Specifically, (1) the Appellant contended that, upon learning that the jury was at an impasse, the trial court should have ordered the jury into the courtroom and addressed the jury personally, and that this should have been done in the presence of the Appellant and his attorney, and (2) the Appellant contended that, because the offense of harassment is a lesser-included offense of the greater offense of stalking, his stalking conviction was void because the same facts that were supposedly used to prosecute him

for the underlying misdemeanor for harassing his ex-wife or [t]-respassing upon her premises were subsequently used to establish an element of the stalking charge, i.e., that the accused had "intentionally and repeatedly followed or harassed" the victim.

On April 18, 2006, Honorable Boyd Whigham, Assistant District Attorney for the Circuit Court of Bullock County, Alabama, filed a Motion to Dismiss Petition for Relief from Conviction or Sentence, (C. 53-58) and, on April 25, 2006, Hon. Burt Smithart issued an Order dismissing Appellant's petition, stating that the ineffective assistance of trial counsel was precluded under the provisions of Rule 32.2(a)(5) in that appeal counsel could have raised this matter on appeal, that the petition was without merit, and that Appellant had failed to meet his burden of proof as provided by Rule 32.3. (C. 59-60)

Appellant filed written notice of appeal from the dismissal of his petition by the trial court on May 2, 2006. (C. 65-68) The record of proceedings in this cause in the Circuit Court of Bullock County was completed and filed with the Court of Criminal Appeals on May 17, 2006. (C. 71)

STATEMENT OF THE STANDARD OF REVIEW

"When reviewing a trial court's ruling on a postconviction-relief petition, the Court of Criminal Appeals must determine whether the trial court abused its discretion." Payne v. State, 791 So.2d 383 (Ala.Crim.App. 1999).

SUMMARY OF THE ARGUMENT

Appellant contends that this Honorable Court should reverse and render the Appellant's conviction or remand this cause to the trial court for an evidentiary hearing on his ineffective-assistance claims against trial and appellate counsel for their failure to properly preserve and raise claims on these grounds: (1) that the trial court erred in reacting to the jury's communication that it could not reach an unanimous verdict, and (2) that the trial court had been without jurisdiction to adjudicate him guilty of the greater offense of stalking because he was acquitted of the lesser-included offense of harassment relating to that charge, in which the underlying lesser-included offense of harassment was used to establish an element of the stalking charge, i.e., that the accused had "intentionally and repeatedly followed or harassed" the victim, that the accused made a "credible threat," and that the accused "intended" to place the victim in reasonable fear of death or serious bodily injury, as such claims, is not barred by any of the provisions or subsections of Rule 32.

Appellant's petition is entitled to be heard on the merits.

ARGUMENT

The Appellant contends that the trial court abused its discretion in dismissing his petition as barred on the procedural grounds specified in Rule 32.7(d).

"Rule 32.7(d), Ala.R.Crim.P., permits the trial court to dismiss the petition 'if the court determines that the petition is not sufficiently specific, or is precluded, or fails to state a claim, or that no material issue of fact or law exists which would entitle the petitioner to relief under this rule and that no purpose would be served by any further proceedings.'"

On March 31, 2006, Appellant filed a Rule 32 petition in the Bullock County Circuit Court attacking his conviction of stalking.

(C. 1) In his petition, the Appellant claimed that he was denied effective assistance of counsel at trial and on appeal for their failure to properly preserve and raise claims on these grounds:

(1) that the trial court erred in reacting to the jury's communication that it could not reach an unanimous verdict, and (2)) that the circuit court had been without jurisdiction to adjudicate him guilty of stalking because he was acquitted of the lesser-included offense of harassment relating to that charge. (C. 2-49) Specifically, (1) the Appellant contended that, upon learning that the jury was at an impasse, the trial court should have ordered the jury into the courtroom and addressed the jury personally, and that this should have been done in the presence of the Appellant and his attorney,



and (2) the Appellant contended that, because the offense of harassment is a lesser-included of the greater offense of stalking, his stalking conviction was void because the same facts that were supposedly used to prosecute him for the underlying misdemeanor for harassing his ex-wife or trespassing upon her premises were subsequently used to establish an element of the stalking charge, i.e., that the accused had "intentionally and repeatedly followed or harassed" the victim, that the accused made a "credible threat," and that the accused "intended" to place the victim in reasonable fear of death or serious bodily injury.

This Honorable Court had held that "[i]n order to prove that counsel was ineffective, an appellant in a post-conviction proceeding must show that the counsel's conduct was deficient and that the appellant was prejudiced by that conduct." Gibby v. State, 753 So.2d 1206 (Ala.Crim.App. 1999) citing Humphrey v. State, 605 So.2d 848 (Ala.Cr.App. 1992); and Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984).

It is undisputed that trial and appellate counsels failed to properly preserve for appellate review the aforementioned claims. The Appellant contends that the court's instruction violated the Supreme Court's holding in Ex parte Giles, 554 So.2d 1089 (Ala. 1987).

This Honorable Court has held on numerous occasions that "[w]hen a defendant makes a claim of ineffective assistance of trial counsel and that claim cannot reasonably be presented in a new trial

motion filed within 30 days, the proper method for presenting that claim for appellate review is to file a petition for post-conviction relief." See, e.g., Jones v. State, 816 So.2d 1067 (Ala.Crim.App. 2000).

As the Alabama Supreme Court explained in Ex parte N.W., 748 So.2d 190 (Ala. 1999) citing Chambers v. City of Opelika, 698 So.2d 792, 794 (Ala.Crim.App. 1996):

"where all the elements of an offense separate from the offense charged are present in or are included among elements of [the] charged offense, such separate offense is a lesser included offense for which [the] defendant may be convicted, though acquitted of the offense charged. To be necessarily included in the greater offense, the lesser must be such that it is impossible to commit the greater without first having committed the lesser."

(Quoting Sharpe v. State, 340 So.2d 885, 887 (Ala.Crim.App.). cert. denied, 340 So.2d 889 (Ala. 1976))(emphasis added in Chambers).

The Appellant contends that the circuit court had been without jurisdiction to adjudicate him guilty of the greater offense of stalking because he was acquitted of the misdemeanor lesser-included offense of harassment relating to that charge.

In addition, the Appellant personally assert that he was not given properly notice that he was being charged with the criminal offense of stalking.<sup>1</sup> (C. 26-34)

This Honorable Court had held that "[c]laim for postconviction relief may not be summarily dismissed because petitioner failed to meet his burden of proof at initial pleading stage, as petitioner

<sup>1</sup>See, e.g., Ex parte N.W., 748 So.2d 190 (Ala. 1999).

has only burden to plead at that stage." Johnson v. State, 835 So.2d 1077 (Ala.Crim.App. 2001).

The Appellant contends that his allegations in his petition for postconviction relief must be accepted as true where state failed to properly address merit of arguments in his petition. See, e.g., Rice v. State, 682 So.2d 484 (Ala.Crim.App. 1995).

Therefore, because the Appellant's claims questioned ineffective assistance of counsel or jurisdiction, the trial court abused its discretion in relying on the procedural grounds of Rule 32.7(d) to dismiss the Appellant's petition.

Appellant contends that the trial court should have held an evidentiary hearing to address his claims, because, he contends, his claims, if proven, would have entitled him to relief under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984).

Appellant further contends that in this case both the record and the law reveal that procedural default is inapplicable.

### CONCLUSION

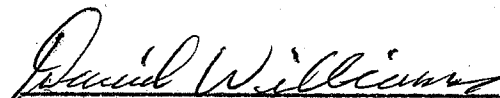
The Appellant has shown that the trial court's could not be anything other than an abuse of his discretion. With respect to the allegations of the original indictment, which reads as follows:

The Grand Jury of dsaid county charge that, before the finding of this indictment, DAVID DONNIE WILLIAMS, whose name is otherwise unknown to the Grand Jury, did on or about between March 24, 2004, and April 17, 2004, intentionally and repeatedly follow or harass CALLIE WILLIAMS and did make a credible threat with the intent to place CALLIE WILLIAMS in reasonable fear of death or serious bodily harm, in violation of Section 13A-6-90 of the Code of Alabama, ...

The evidence at trial basically established that on three dates, Williams was alleged to have harassed the victim, those dates were March 24th, March 30th and April 17th. Williams was acquitted of the March 30th incident. As of March 24th, the Appellant and alleged victim were still living in the same house as a couple. The relationship was without a doubt a tumultuous one. But, where the couple was still residing together in the same abode, the fact that the Appellant was around the victim cannot be made a criminal act. To the degree that the elements of stalking include a repeated and intentional harassment, the trial and appellate attorneys should have known the case was not made. To the degree the trial court denied the allegations raised in the petition summarily, those actions are due to be reversed and remanded for a proper adjudication of the issues.

CERTIFICATE OF SERVICE

I hereby certify that I have delivered a copy of the above and foregoing Brief of the Appellant to the Court of Criminal Appeals for service on the Attorney General on this the 31st day of May, 2006.

A handwritten signature in cursive script, reading "David D. Williams", is written over a horizontal line.

David D. Williams  
Pro Se, Appellant

04-18-2006 12:44pm From-DISTRICT ATTORNEY 3RD CIRCUIT

APPENDIX

-57

NO.: \_\_\_\_\_

G. J. No. BF-04-035

A TRUE BILL, presented to the judge Presiding in open Court by the Foreperson of this Grand Jury, and filed in open court this \_\_\_\_ day of \_\_\_\_\_.

Leon Battle  
Grand Jury Foreman

\_\_\_\_\_  
Clerk of the Circuit Court  
of Bullock County  
Third Judicial Circuit

10/19/04  
Date

**INDICTMENT**

**THE STATE OF ALABAMA**

vs.

**DAVID DONNIE WILLIAMS**

*Address: 505 JOHNSON STREET, UNION SPRINGS, AL 36089*

*alias*

*None Reported*

**CHARGES:**

DOMESTIC VIOLENCE THIRD DEGREE - HARASSMENT(13A-6-132)

CLASS

**A**

TYPE

**M**

**WITNESSES:**

CALLIE WILLIAMS, 1010 MLK BLVD, LOT #2, UNION SPRINGS, AL 36089

LAKISHA WILLIAMS, 1010 MLK BLVD, LOT 2, UNION SPRINGS, AL 36089

Previous Bond \$ \_\_\_\_\_ Bail fixed at \$ \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Judge Presiding

**THE STATE OF ALABAMA**  
**Bullock COUNTY**

**CIRCUIT COURT**

2004

**BOYD WHIGHAM**  
**DISTRICT ATTORNEY**  
**THIRD JUDICIAL CIRCUIT**

04-18-2006 01:03pm From-DISTRICT ATTORNEY 3RD CIRCUIT

334 687 9269

T-781 P.001/001 F-965

58

NO. : \_\_\_\_\_

G. J. No.BF-04-035

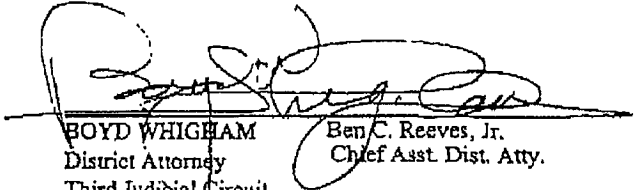
THE STATE OF ALABAMA, Bullock COUNTY  
Circuit Court - Third Judicial Circuit

---

COUNT 1

The Grand Jury of said county charge that, before the finding of this indictment, DAVID DONNIE WILLIAMS, whose name is otherwise unknown to the Grand Jury, did on or about March 30, 2004, commit the crime of Harassment (Section 13A-11-8 of the Code of Alabama), with intent to harass, annoy, or alarm another person, to-wit: CALLIE WILLIAMS, did direct a threat, verbal or nonverbal, to-wit: grabbed her by her clothes and verbally threatened her, with the intent to carry out the threat, toward another person, to-wit: CALLIE WILLIAMS, a reasonable person and target of the threat, causing her to fear for her safety, with the victim being a current or former spouse, parent, child, a person with whom he/she has a child in common, a present or former household member, or a person whom he/she has or had a dating relationship, in violation of Section 13A-6-132 of the Code of Alabama,

against the peace and dignity of the State of Alabama.



BOYD WHIGHAM  
District Attorney  
Third Judicial Circuit

Ben C. Reeves, Jr.  
Chief Asst. Dist. Atty.

NO.:

04-144

G. J. No. BF-04-034

A TRUE BILL, presented to the judge Presiding in open Court by the Foreperson of this Grand Jury, and filed in open court this 19 day of Oct, 04.

Leon Battle  
Grand Jury Foreman

Wm J. [Signature]  
Clerk of the Circuit Court  
of Bullock County  
Third Judicial Circuit

10/19/04  
Date

## INDICTMENT

THE STATE OF ALABAMA

vs.

DAVID DONNIE WILLIAMS

Address: 505 JOHNSON STREET, UNION SPRINGS, AL 36089  
alias

None Reported

## CHARGES:

STALKING(13A-6-90)

CLASS

TYPE

C

F

## WITNESSES:

LT. JAMES FINNEY, UNION SPRINGS POLICE DEPARTMENT, UNION SPRINGS, AL 36089  
CALLIE WILLIAMS, 1010 MLK BLVD, LOT #2, UNION SPRINGS, AL 36089  
OFFICER NATHAN WILLIAMS, UNION SPRINGS POLICE DEPT, UNION SPRINGS, AL 36089  
QUADARIOUS WILLIAMS, 1010 MLK BLVD, LOT #2, UNION SPRINGS, AL 36089

Previous Bond \$ \_\_\_\_\_ Bail fixed at \$ no Bond this 19th day of October, 2004

[Signature]  
Judge Presiding

THE STATE OF ALABAMA  
Bullock COUNTY

CIRCUIT COURT

2004

BOYD WHIGHAM  
DISTRICT ATTORNEY  
THIRD JUDICIAL CIRCUIT



13

NO. : \_\_\_\_\_

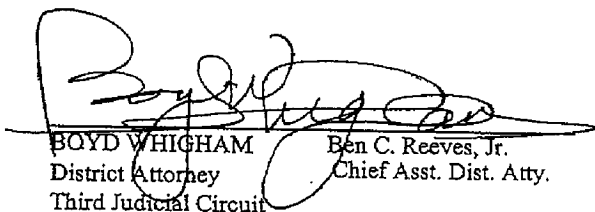
G. J. No.BF-04-034

THE STATE OF ALABAMA, Bullock COUNTY  
Circuit Court - Third Judicial Circuit

COUNT 1

The Grand Jury of said county charge that, before the finding of this indictment, DAVID DONNIE WILLIAMS, whose name is otherwise unknown to the Grand Jury, did on or about between March 24, 2004 and April 17, 2004, intentionally and repeatedly follow or harass CALLIE WILLIAMS and did make a credible threat with the intent to place CALLIE WILLIAMS in reasonable fear of death or serious bodily harm, in violation of Section 13A-6-90 of the Code of Alabama,

against the peace and dignity of the State of Alabama.

  
BOYD WHIGHAM  
District Attorney  
Third Judicial Circuit

Ben C. Reeves, Jr.  
Chief Asst. Dist. Atty.

CR-05-1451

---

*In the COURT of CRIMINAL APPEALS  
of ALABAMA*

---

DAVID DONNIE WILLIAMS,

Appellant,

v.

STATE OF ALABAMA,

Appellee.

---

*On Appeal From the Circuit Court of  
Bullock County, Alabama  
(CC-2004-144.60)*

---

**BRIEF OF APPELLEE**

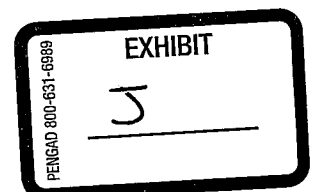
Troy King  
Attorney General

Beth Slate Poe  
Assistant Attorney General

Audrey Jordan  
Assistant Attorney General  
Counsel of Record\*

State of Alabama  
Office of the Attorney General  
11 South Union Street  
Montgomery, Alabama 36130-0152  
(334) 242-7300\*

June 28, 2006



**STATEMENT REGARDING ORAL ARGUMENT**

Oral argument in this case is not necessary because the record and briefs in this case adequately set forth the facts and law. Rule 34, A.R.A.P.

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**STATEMENT OF THE CASE AND FACTS**

This is an appeal from the dismissal of a Rule 32 postconviction petition in the Circuit Court of Bullock County, Alabama (CC-2004-144.60). Judge L. Bernard Smithart presided.

David Donnie Williams filed a Rule 32 postconviction petition in the Bullock County Circuit Court on March 28, 2006 (C. 9), challenging his conviction of stalking and the resulting sentence of thirty-eight years' imprisonment.

(C. 2) Williams raised the following grounds for relief:

1. The Constitution of the United States or of the State of Alabama requires a new trial because:

a. the trial court erroneously instructed the jury to continue deliberations after it informed the trial court that it was deadlocked (C. 4, 10);

b. the trial court should have personally instructed the jury regarding its deliberations in front of Williams and his trial counsel (C. 10);

c. Williams was denied effective assistance of trial counsel because trial counsel failed to object to the trial court's instruction that the jury continue deliberations (C. 11); and,

d. Williams was denied effective assistance of appellate counsel because:

i. the only issue raised on appeal was sufficiency of the evidence and "other issues were appealable" (C. 12); and,

ii. appellate counsel's brief was "written in a manner to be totally" incomprehensible (C. 12); and,

2. The trial court was without jurisdiction to render judgment or impose sentence because Williams was acquitted of the lesser included offense. (C. 11)

On April 18, 2005, the State filed a response and motion to dismiss Williams's petition arguing that Williams's contentions were without merit, precluded pursuant to Rule 32.2(a) of the Alabama Rules of Criminal Procedure, and failed to meet the specificity requirements of Rule 32.6(b) of the Alabama Rules of Criminal Procedure. (R. 53-56) On April 25, 2006, the trial court entered a written order dismissing Williams's petition finding that Williams's contentions that trial counsel was ineffective were without merit and precluded pursuant to Rule 32.2(a)(5) of the Alabama Rules of Criminal Procedure. (C. 59) The trial court also found that its response to the jury's note that it could not reach a verdict was proper. (C. 59) The trial court further found that Williams had failed to meet his burden of proof pursuant to Rule 32.3 of the Alabama Rules of Criminal Procedure. (C. 59) Williams

filed a written notice of appeal on May 2, 2006. (C. 1,  
65.)



**ISSUE PRESENTED FOR REVIEW**

Did the trial court properly dismiss Williams's Rule 32 postconviction petition?

#### STANDARD OF REVIEW

The standard of review in evaluating the denial of a postconviction petition is whether the trial court abused its discretion. See Elliot v. State, 601 So. 2d 1118, 1119 (Ala. Crim. App. 1992). This Court will affirm the trial court's decision to deny a postconviction petition if the trial court was correct for any reason. See Bearden v. State, 825 So. 2d 868, 870 (Ala. Crim. App. 2001).

**SUMMARY OF ARGUMENT**

The trial court properly dismissed Williams's petition pursuant to Rule 32.7(d) of the Alabama Rules of Criminal Procedure. Williams's contention that trial counsel was ineffective for failing to preserve for appeal the trial court's instruction to the jury to continue deliberations is not properly before this Court for appellate review because it pertains to an offense for which Williams was acquitted. Williams's apparent claim of insufficient evidence is precluded pursuant to Rule 32.2(a) of the Alabama Rules of Criminal Procedure because it was raised at trial and on direct appeal. All other claims raised by Williams in his brief are not preserved for appellate review because they are raised for the first time on appeal.

**ARGUMENT**

**The Trial Court Properly Denied Williams's Rule 32 Postconviction Petition Pursuant To Rule 32.7(d) Of The Alabama Rules Of Criminal Procedure.**

Williams contends that the trial court abused its discretion by dismissing his petition pursuant to Rule 32.7(d) of the Alabama Rules of Criminal Procedure. He argues that: (1) trial counsel was ineffective for failing to object to the trial court's reaction to the jury's communication that it could not reach a unanimous verdict; (2) trial counsel was ineffective for failing to object to the trial court's adjudication of guilt for stalking when the jury acquitted Williams of harassment; (3) appellate counsel was ineffective for failing to raise the former two issues on direct appeal; and, (4) Williams was not provided proper notice that he was charged with stalking.

(Williams's brief, pgs. 8-10.) Williams also appears to contend that there was insufficient evidence to support his conviction. (Williams's brief, pg. 12.) Furthermore, Williams avers that the trial court should have held an

evidentiary hearing on his ineffectiveness claims.<sup>1</sup>

(Williams's brief, pg. 11.)

This Court will not review issues raised for the first time on appeal. See Lomnick v. State, 597 So. 2d 1311, 1312 (Ala. Crim. App. 1992). Williams's contentions numbered two, three, and four above are raised for the first time on appeal, and therefore, are not properly before this Court for appellate review. Additionally, Williams's contention that there was insufficient evidence to sustain his stalking conviction is precluded pursuant to Rule 32.2(a)(2) and (4) of the Alabama Rules of Criminal Procedure because this issue was raised at trial and on direct appeal.<sup>2</sup> See Duncan v. State, 925 So. 2d 245, 280 (Ala. Crim. App. 2005). The trial court properly dismissed Williams's remaining contention because it is without merit.

---

<sup>1</sup>Any additional claims raised in Williams's petition are deemed abandoned because he failed to raise them on appeal. See Dobyne v. State, 805 So. 2d 733, 753 (Ala. Crim. App. 2000) ("[A]llegations not expressly argued on appeal are deemed by [this Court] to be abandoned.").

<sup>2</sup>This Court may take judicial notice of its own records in another proceeding. Ex parte Salter, 520 So. 2d 213, 216 (Ala. Crim. App. 1987).

Rule 32.7(d) of the Alabama Rules of Criminal Procedure provides that a trial court may summarily dismiss a Rule 32 postconviction petition "[i]f [it] determines that the petition is not sufficiently specific, or is precluded, or fails to state a claim, or that no material issue of fact or law exists which would entitle the petitioner to relief." See also Woods v. State, CR-02-1959, 2004 WL 1909291, at \*7 (Ala. Crim. App. Aug. 27, 2004); Murph v. State, 853 So. 2d 291, 292 (Ala. Crim. App. 2002). Consequently, a petitioner is not automatically entitled to an evidentiary hearing. See Boyd v. State, 913 So. 2d 1113, 1126 (Ala. Crim. App. 2003). Additionally, the trial court is not required to make specific findings of fact when summarily dismissing a petition. See Fowler v. State, 890 So. 2d 1101, 1103 (Ala. Crim. App. 2004); Duren v. State, 813 So. 2d 928, 930 (Ala. Crim. App. 2000). Furthermore, the trial court's decision to dismiss the petition will be upheld if this Court determines the trial court correctly dismissed the petition for any reason. See Bearden v. State, 825 So. 2d 868, 870 (Ala. Crim. App. 2001).

**A. Issue Of Whether Trial Court Properly Instructed The Jury To Continue Deliberations Is Not Properly Before This Court For Appellate Review.**

Williams contends that trial counsel was ineffective for failing to properly preserve for review the trial court's instruction to the jury to continue deliberations after learning the jury was "at an impasse." (Williams's brief, pg. 8.) He argues that trial counsel should have required the trial court to personally address the jury in the presence of Williams and trial counsel. (Williams's brief pg. 8.) Williams's contention is not properly before this Court for appellate review.

This Court has held that "[o]nly the [charge] upon which an appellant was found guilty is subject to appellate review." Snell v. State, 677 So. 2d 786, 791 (Ala. Crim. App. 1995). The record on direct appeal shows that the following occurred after the jury retired for deliberations:

(Whereupon at 6:15 p.m. the jury sent another note out.)

[Court]: I want y'all to see this: It's got some vote numbers on it.

The note reads - - It gives some numbers **on where they are on domestic violence**. How should we go about resolving this issue?

***They seem to be slit.***

[Defense Counsel]: On behalf of the defense, I recommend they continue deliberating.

[Court]: Same from the State?

[Prosecution]: Yes.

[Court]: I'm just going to write that they continue deliberations.

(Whereupon the note with the Court's response was sent back in to the jury room.)

(DA R. 548-49) <sup>3</sup> (Emphasis added).

Assuming, though not conceding, that the jury was "deadlocked" as Williams's contends in his petition, it is evident that the jury's split status pertained to the indictment charging third-degree domestic violence. Because Williams was acquitted of third-degree domestic violence, this issue may not be raised for review. Consequently, Williams's trial counsel was not ineffective for failing to pursue nonmeritorious claims. See Dill v. State, 767 So. 2d 366, 376 (Ala. Crim. App. 1999); Jones v. State, 753 So. 2d 1174, 1186 (Ala. Crim. App. 1999). Thus,

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<sup>3</sup>The transcript on direct appeal will be referred to as "DA R." and "DA C." references the clerk's record on direct appeal.



the trial court properly dismissed Williams's petition pursuant to Rule 32.7(d).

**B. The Trial Court Properly Adjudged Williams Guilty Of Stalking Because The Separate Indictment Charging Third-Degree Domestic Violence Was Not A Lesser-Included Offense.**

Williams also contends that trial counsel was ineffective for failing to object to the trial court's adjudication of guilt for stalking. (Williams's brief, pg. 8-9.) As mentioned above, this issue is not preserved for appellate review because it was raised for the first time on appeal. Furthermore, Williams's claim does not appear to be supported by the record.

The record on direct appeal shows that Williams was indicted in case numbered CC-2004-144 for stalking and for third-degree domestic violence in case numbered CC-2004-145. (DA R. 12) Because these offenses were charged in separate indictments and given separate case numbers, presumably they were based on different factual

circumstances.<sup>4</sup> Williams has not alleged or proven otherwise.

Also, the jury verdict form indicates that the verdicts were for cases CC-2004-144 and CC-2005-145. (DA C. 34) The trial court instructed the jury not to "read anything into the order that [the trial court] put the verdicts" on the verdict form because "[o]ne had to be first and one second." (DA R. 544) Furthermore, the jury was not instructed on lesser-included offenses by the trial court. (DA R. 535-546) Thus, there is no indication that the third-degree domestic violence offense was actually a lesser-included of the stalking offense to be considered by the jury. Hence, the trial court properly dismissed Williams's petition pursuant to Rule 32.7(d).

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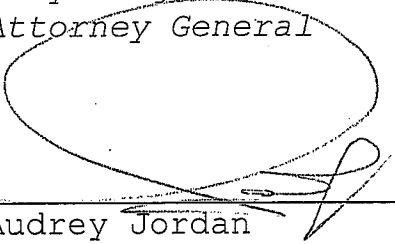
<sup>4</sup>The indictment in CC-2005-145 charging Williams with third-degree domestic violence is not included in the record or the record on direct appeal. It is Williams's duty to provide this Court with a complete record on appeal. See Johnson v. State, 823 So. 2d 1, 19 (Ala. Crim. App. 2001).

**CONCLUSION**

The trial court correctly dismissed Williams's petition; therefore, there was no abuse of discretion. Because Williams has shown no abuse of discretion, the trial court's decision must be affirmed.

Respectfully submitted,

Troy King  
*Attorney General*



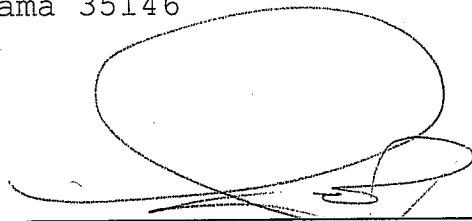
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Audrey Jordan  
*Assistant Attorney General*

**CERTIFICATE OF SERVICE**

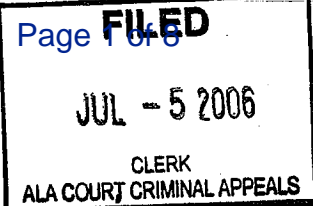
I hereby certify that on this 28th day of June, 2006, I did serve a copy of the foregoing on Williams, by placing the same in the United States Mail,

David Donnie Williams  
AIS # 169189  
St. Clair Correction Facility  
1000 St. Clair Road  
Springville, Alabama 35146

  
\_\_\_\_\_  
Audrey Jordan  
Assistant Attorney General

ADDRESS OF COUNSEL:  
Office of the Attorney General  
Criminal Appeals Division  
11 South Union Street  
Montgomery, Alabama 36130-0152  
(334) 242-7300

145715/94838



CRIMINAL APPEALS NO. CR-05-1451

IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

DAVID DONNIE WILLIAMS,

Appellant,

vs.

STATE OF ALABAMA,

Appellee.

On Appeal from the Circuit Court of  
Bullock County, Alabama (CC04-144.60)

**Reply Brief**

David Donnie Williams  
Pro Se, Appellant  
AIS #169189, G2-C-132  
1000 St. Clair Road  
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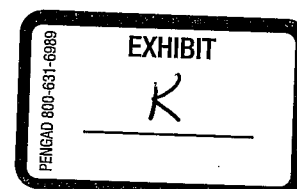


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SUMMARY OF THE ARGUMENT

The Appellant expressly adopts the Summary of the Argument as was presented in the Appellant's brief on appeal from the denial of his Rule 32 petition, CR-05-1451.



ARGUMENT

The State asserts that Williams's contentions numbered two, three, and four above are raised for the first time on appeal, and therefore, are not properly before this Court for appellate review. (Appellee's Brief, p.8). However, this argument ignores Williams's contentions in his petition. On March 31, 2006, Williams filed a Rule 32 petition in the Bullock County Circuit Court attacking his 2004 conviction for stalking. (C.1) This petition was based on his ineffective-assistance claims against trial and appellate counsel for their failure to properly preserve and raise claims on these grounds: (1) that the trial court erroneously instructed the jury to continue deliberations after it informed the trial court that it was deadlocked; and, (2) that the trial court was without jurisdiction to adjudge the defendant guilty of stalking because he was acquitted of third-degree harassment/domestic violence, in which was a lesser-included of the stalking offense. (C.2-49)

This Court, in Jones v. State, 689 So.2d 926 (Ala.Crim.App. 1995), held that petitioner was entitled to consideration of merits of his claims for postconviction relief due to the numerous and convoluted nature of claims of ineffective assistance of appellate and trial counsel that were interwoven with each other.

The State contends that the trial court properly adjudged Williams guilty of stalking because the separate indictment charging third-degree domestic violence was not a lesser-included offense.

(Appellee's Brief, p.12).<sup>1</sup> However, that argument ignores the obvious purpose under the plain language of §12-11-30(2), as recognized in Casey v. State, 740 So.2d 1136 (Ala.Crim.App. 1998) the circuit court has exclusive original jurisdiction over any misdemeanor charge that is a lesser included offense within a felony charge or that arises from the same incident as a felony charge. In the present case, Williams was not indicted only for misdemeanor offense.<sup>2</sup> Williams was also indicted for a felony offense, which is within the jurisdiction of the circuit court. The misdemeanor offense against Williams arose from the same incident as the felony stalking with which Williams was originally charged. For example, in Mims v. State, 816 So.2d 509 (Ala.Crim. App. 2001) a stalking offense, in the absence of proof of misdemeanor harassment offense, i.e., that the accused had "intentionally and repeatedly followed or harassed" the victim, necessarily arises from the same incident as, and constitutes a lesser included offense of, the acquitted misdemeanor harassment charge. Rule 2.2, Ala.R. Crim.P., appears to be consistent with this interpretation of the

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<sup>1</sup> This Court should take note that the State's argument are precluded from appellate review as it has failed to comply with Rule 28(a)(10), Ala.R.App.P. by not including the required citation to appropriate authority in support of it's contentions. See, e.g. Harrison v. State, 905 So.2d 858, 860 (Ala.Crim.App. 2005).

<sup>2</sup> The indictment in CC-2005-145 charging Williams with third-degree harassment/domestic violence is included in the record on appeal. (C.57-58)

applicable statuted. Rule 2.2 provides, in pertinent part:

"(a) Felonies. All felony charges and misdemeanor or ordinance violations which are lesser included offenses within a felony charge or which arise from the same incident as a felony charge shall be prosecuted in circuit court, except that the district court shall have concurrent jurisdiction to receive guilty pleas and to impose sentences in felony cases not punishable by sentence of death, including related and lesser included misdemeanor charges, and may hold preliminary hearings with respect to felony charges.

"(b) Misdemeanors and Ordinance Violations. All misdemeanor offenses (including an indictment charging a traffic infraction) shall be prosecuted originally in district court or, where adopted as municipal ordinance violations, municipal court, except:

"(1) Misdemeanors for which an indictment has been returned by a grand jury.

"(2) Misdemeanors that are lesser included offenses within a felony charge as to which concurrent jurisdiction as described in Rule 2.2(a) has not been exercised.

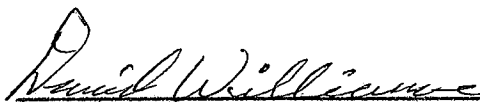
"(c) Transfer of Cases. Cases filed in a court that does not have original trial jurisdiction of the offense charged shall be transferred to the appropriate court as provided in Ala. Code 1975, §12-11-9."

See also Davis v. State, 806 So.2d 404, 409 (Ala.Crim.App. 2001) citing Dutton v. State, 807 So.2d 596 (Ala.Crim.App. 2001); McDuffie v. State, supra; Blevins v. State, 747 So.2d 914 (Ala.Crim.App. 1998), overruled in part, Ex parte Parker, 740 So.2d 432 (Ala. 1999).

In further response to the State's brief, the Appellant re-adopts and incorporates the arguments and issues set forth in its initial brief as if fully set out herein.

CERTIFICATE OF SERVICE

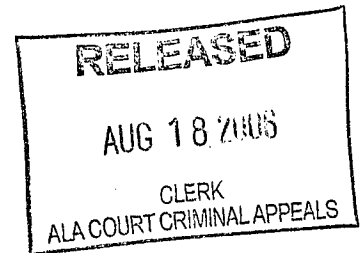
I hereby certify that I have delivered a copy of the foregoing Reply Brief to the Court of Criminal Appeals for service on the Attorney General on this the 5th day of July, 2006.

  
David D. Williams  
Pro Se, Appellant  
AIS #169189, G2-C-132  
1000 St. Clair Road  
Springville, AL 35146-5582

Jordan 94838

Notice: This unpublished memorandum should not be cited as precedent. See Rule 54, Ala.R.App.P. Rule 54(d), states, in part, that this memorandum "shall have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state, except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar."

**Court of Criminal Appeals**  
State of Alabama  
Judicial Building, 300 Dexter Avenue  
P. O. Box 301555  
Montgomery, AL 36130-1555



H.W."BUCKY" McMILLAN  
Presiding Judge  
SUE BELL COBB  
PAMELA W. BASCHAB  
GREG SHAW  
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Judges

Lane W. Mann  
Clerk  
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**MEMORANDUM**

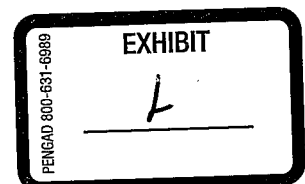
CR-05-1451

Bullock Circuit Court CC-2004-144.60

David Donnie Williams v. State of Alabama

COBB, Judge.

David Donnie Williams appeals the circuit court's denial of his petition for post-conviction relief filed pursuant to Rule 32, Ala. R. Crim. P. The petition sought relief from his November 2004 conviction for stalking for which he was sentenced to 38 years' imprisonment. Williams appealed his conviction, and this Court affirmed the conviction with an unpublished memorandum. Williams v. State, (No. CR-04-0846) So. 2d \_\_\_\_ (Ala. Crim. App. 2005) (table). On March 28, 2006, Williams filed this petition with the Bullock Circuit Court. In his petition, Williams alleged (1) that the trial court erred after receiving a note from the jury that it was at an impasse by sending written instructions to the jury to



continue deliberations instead of bringing the jury back into the courtroom and orally instructing the jury in the presence of Williams, (2) that his trial counsel was ineffective for not objecting to the aforementioned action by the court, (3) that the trial court was without jurisdiction to adjudicate him guilty of stalking because the jury found him not-guilty of third-degree domestic violence, (4) that he had ineffective assistance of counsel at the appellate level because counsel did not raise the issue as to whether the trial court had jurisdiction to adjudicate Williams guilty of stalking and because appellate counsel only raised the issue of the sufficiency of the evidence on appeal. On April 25, 2006, the Bullock Circuit Court entered an order summarily dismissing Williams's petition without an evidentiary hearing pursuant to Rule 32.7(d), Ala. R. Crim. P. This appeal ensues.

On appeal, Williams argues that he received ineffective assistance of trial counsel because trial counsel did not object to the trial judge sending a written instruction to the jury to continue deliberating, and because trial counsel did not object to the court's purported lack of jurisdiction to adjudicate him guilty of stalking. He also argues that he received ineffective assistance of appellate counsel because appellate counsel failed to raise the aforementioned issues on direct appeal. He further alleges that he did not receive proper notice that he was being charged with stalking.

We note that Williams raises for the first time on appeal allegations that he received ineffective assistance of counsel because trial counsel failed to object to the purported issue regarding the lack of jurisdiction of the trial court to adjudicate Williams guilty of stalking and that he did not receive proper notification that he was being charged with stalking. "An issue raised for the first time on appeal is not subject to appellate review because it has not been properly preserved and presented." Dickey v. State, 901 So. 2d 750, 756 (Ala. Crim. App. 2004), quoting Pate v. State, 601 So. 2d 210, 213 (Ala. Crim. App. 1992). Because these issues are raised for the first time on appeal, they are not properly before this court.

Williams's claims regarding ineffective assistance of counsel are properly before this Court. Rule 32.2(d), Ala. R. Crim. P., states:

"Any claim that counsel was ineffective must be raised as soon as practicable, either at trial, on direct appeal, or in the first Rule 32 petition, whichever is applicable. In no event can relief be granted on a claim of ineffective assistance of trial or appellate counsel raised in a successive petition."

In order for a claim of ineffective assistance of counsel to be considered on direct appeal, it must first be raised in a motion for new trial filed within 30 days of sentences pursuant to Rule 24.1(b), Ala. R. Crim. P. Otherwise it must be raised in a Rule 32 petition for post-conviction relief. Ex parte E.D., 777 So. 2d 113 (Ala. 2000). The record from the direct appeal indicates that Williams was sentenced on December 9, 2004. Trial counsel filed a motion for a new trial on January 8, 2005, which was subsequently denied. In that motion, no mention was made of ineffective assistance of counsel. On February 24, 2005, trial counsel moved to withdraw from the case, and on March 2, 2005, the trial court granted that motion and appointed appellate counsel. The transcript of the trial was not completed until June 20, 2005. Obviously, appellate counsel was appointed beyond the 30 days prescribed in Rule 24.1 for filing a motion for a new trial; thus, he was unable to present this issue on direct appeal. As such, Williams's petition is the first practical opportunity for Williams to raise this issue.

In order to prevail on an ineffective assistance of counsel claim, Williams must satisfy the two-pronged test set forth by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984). Williams must show not only that the counsel's performance was deficient, but must also show that the deficiency prejudiced him. Strickland, supra. "This Court indulges the presumption that trial counsel's representation was sufficient and that counsel's assistance was effective." Bowen v. State, 899 So. 2d 310, 312 (Ala. Crim. App. 2004).

Williams's allegations that he received ineffective assistance of trial counsel are moot. Williams asserts that his attorney should have objected to the trial judge's written instruction to the jury to continue deliberations. The jury's note to the judge, however, indicated that the jurors were



split on the domestic violence charge.<sup>1</sup> Williams was acquitted of the domestic violence charge. Obviously, Williams was the beneficiary of the jury's continued deliberations. He is thus not entitled to relief.

Given the foregoing, there could be no error on the part of appellate counsel for not raising this moot issue on appeal. In regards to Williams's other claim of ineffective assistance of counsel, it too is based on a faulty premise. A charged offense is considered a lesser included offense if "it is established by proof of the same or fewer than all the facts required to establish the commission of the offense charged." § 13A-1-9(a)(1), Ala. Code 1975. The indictment charging Williams with stalking states that the charge is premised on actions taken by Williams between March 24 and April 17, 2004. (Direct Appeal C. 13). The indictment charging Williams with domestic violence, however, states that the charge is premised on an incident on March 30, 2004, in which Williams grabbed Callie Williams by her clothes and verbally threatened her. (R. 58). Thus, separate evidence had to be presented regarding each charge. As such, domestic violence cannot be considered a lesser included offense encompassed in the stalking charge. It thus would have been improper for Williams's appellate counsel to make such an erroneous argument to this court. Therefore, Williams is not entitled to any relief as to this claim.

For the foregoing reasons, the trial court's denial of David Donnie Williams's Rule 32 petition is affirmed.

AFFIRMED.

McMillan, P.J., and Shaw, and Wise, JJ., concur.  
 Baschab, J., concurs in the result.

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<sup>1</sup>After receiving the note from the jury, the trial judge stated the following on the record: "I want y'all to see this: It's got some vote numbers on it. The note reads -- It gives some numbers on where they are on domestic violence. How should we go about resolving this issue?" (Direct Appeal R. 548) (emphasis added).



"ATTORNEY GENERAL'S COPY"

FILED

AUG 28 2006

CLERK  
ALA COURT CRIMINAL APPEALS

CRIMINAL APPEALS NUMBER: CR-05-1451

IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

DAVID DONNIE WILLIAMS,

APPELLANT,

VS.

STATE OF ALABAMA,

APPELLEE.

On Appeal from the Circuit Court of  
Bullock County, Alabama (CC-2004-144.60)

APPLICATION FOR REHEARING  
Rule 39 (K) REQUEST FOR ADDITIONAL FACTS  
REHEARING BRIEF

David Donnie Williams  
Pro Se, Appellant  
AIS #169189, G4-D-238  
1000 St. Clair Road  
Springville, AL 35146-5582

EXHIBIT

M

PENGAD 800-631-6989

IN THE COURT CRIMINAL APPEALS OF ALABAMA

DAVID DONNIE WILLIAMS,

Appellant,

vs.

STATE OF ALABAMA,


Appellee.

CRIMINAL APPEALS NO.  
CR-05-1451

APPLICATION FOR REHEARING

Appellant, David Donnie Williams, respectfully requests  
a rehearing in the above-styled cause on the following grounds:

1. This Court erred in holding that the trial court has not abused its discretion in denying the Appellant's Rule 32 petition for post-conviction relief based on his ineffective-assistance claims against trial and appellate counsel for their failure to properly preserve and raise a claim on these grounds: that the trial court erred after receiving a note from the jury that it was at an impasse by sending written instructions to the jury to continue deliberations instead of bringing the jury back into the courtroom and orally instructing the jury in the presence of the Appellant, and that the trial court was without jurisdiction to adjudicate him guilty of the offense of stalking, as charged in the indictment because the jury found him not-guilty of the offense of harassment/domestic violence.

  
David D. WILLIAMS  
Pro Se, Appellant  
AIS #169189, G4-D-238  
1000 St. Clair Road  
Springville, AL 35146-5582

IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

DAVID DONNIE WILLIAMS,	)	
	)	
Appellant,	)	
	)	
vs.	)	CRIMINAL APPEALS NO.
	)	CR-05-1451
STATE OF ALABAMA,	)	
	)	
Appellee.	)	

RULE 39(k), ARAP, REQUEST FOR ADDITIONAL FACTS

Comes now, David Donnie Williams, and respectfully requests that the Court add the following facts to it's opinion:

STATEMENT OF THE FACTS

The facts of this case are stated in the original opinion of this Court as follows:

The evidence at trial tended to establish that Donnie and Callie Williams worked together at Wayne Farms and also periodically lived together in the Comfort Motel Trailer Park from 1997 until March 2004. During this time, Donnie intentionally and repeatedly harassed Callie. On March 19, 2004, Donnie left and returned to Callie's residence several times. On one of these occasions, Donnie took Callie's cellular telephone. Callie became suspicious that Donnie was buying and using crack cocaine so she decided to stay with her daughter, Lakiesha Williams. Callie then informed Donnie that he needed to return her phone; she further advised him that she no longer wanted to see him because of his drug use. Later that day, Callie agreed to drive Donnie to Hendley. Before arriving at their destination, Donnie instructed Callie to turn down a dirt road. Callie refused

and instead drove back home, believing that Donnie would kill her if she drove down the dirt road. Callie then went to her daughter's apartment. That night, Donnie came to her daughter's apartment five or six times in an attempt to persuade Callie to return home.

On March 24, Donnie approached Callie at work and said, "Bitch, you don't know; I'll hurt you," then grabbed Callie's shirt and repeated the statement. Callie told Donnie that she wanted her phone back and that if he did not let her go that she would lose her job. Later that day, as Callie walked to the office, Donnie grabbed her again. Callie reported the incident to her supervisor, who spoke with Donnie. Again that night Donnie approached Callie and said that he "...went and told momma what [you] did..." Callie asked Donnie to leave her alone and again reported the confrontation to her supervisor. After work, Callie returned to her daughter's apartment. Later, Donnie came to the apartment in search of Callie, but no one responded when he knocked on the door. Callie asked her landlord at the trailer park to issue a trespass notice against Donnie, which he did. On March 26, 2004, Donnie returned to Lakeisha's apartment, but nobody answered the door.


On March 27, 2004, Callie returned to her residence at the trailer park to get clothing for herself and her children. Upon arrival, she observed Donnie's vehicle parked outside the trailer. She contacted the police who arrived, found Donnie asleep inside, escorted him outside and informed him of the

trespass notice filed against him. Later that night, Donnie confronted Callie at a local restaurant and said, "Bitch, I don't like what you did to me." Again, Callie told him to leave her alone and immediately left the restaurant. Donnie followed her outside and said, "Bitch, I will kill you." Callie responded, "If you are going to do it, do it right here. I'm tired of you threatening my life."

On the afternoon of March 30, 2004, Callie and Lakeisha went home to pick up her daughter, N.W. N.W. was not there when they arrived. A few minutes later, Donnie drove up with N.W. in the backseat of his truck. Upon getting out of the vehicle, Donnie held N.W.'s hand, preventing her from going to Callie. Donnie then grabbed Callie's shirt and attempted to pull her out of the vehicle. Callie told Donnie to let N.W. go and he replied, "Bitch, I don't like what you did..." and threatened to kill her. When Donnie finally released N.W.'s hand, she ran to her Callie. They attempted to drive away, but Donnie pulled his truck in front of theirs, preventing their escape. After Callie managed to escape, she drove to the police station and filed a police report.

On April 17, 2004, Callie and her son Q.W. traveled to the AG Grocery Store for orange juice. Upon leaving the store, Donnie was parked in the space behind her and said, "Bitch, I don't like what you did." Callie replied, "Why don't you leave me alone. I ain't bothering you." At this point, Q.W.

said to Donnie, "Why don't you leave my momma alone?" Donnie replied to Q.W., "Why don't you shut up before I fuck you up." Donnie then stated to Callie, "...if you mess around with me, I'd rather see you in heaven or hell." Donnie then drove away, as did Callie. After traveling a short way Callie noticed Donnie was following her, so she pulled over and called the police, (emphasis added). (Direct Appeal, CR-04-0846).



David D. Williams  
Pro Se, Appellant  
AIS #169189, G4-D-238  
1000 St. Clair Road  
Springville, AL 35146-5582

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is not requested by the Appellant.

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STATEMENT OF THE CASE

The Appellant expressly adopts the Statement of the Case as was presented in the Appellant's brief on appeal from the denial of his Rule 32 petition, CR-05-1451.

STATEMENT OF THE ISSUE

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING  
THE APPELLANT'S RULE 32 PETITION WITHOUT HOLDING AN EVIDENTIARY  
HEARING ON THE ISSUES RAISED THEREIN?

STATEMENT OF THE FACTS

Appellant incorporates herein the Rule 39(k), ARAP, Request for Additional Facts.

STATEMENT OF THE STANDARD OF REVIEW

The Appellant adopts the Statement of the Standard of Review as was presented in the Appellant's brief on appeal from the denial of his Rule 32 petition, CR-05-1451.

SUMMARY OF THE ARGUMENT

The Appellant adopts the Summary of the Argument as was presented in the Appellant's brief on appeal from the denial of his Rule 32 petition, CR-05-1451.

ARGUMENT

WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE Appellant'S RULE 32 PETITION WITHOUT HOLDING AN EVIDENTIARY HEARING ON THE ISSUES RAISED THEREIN?

The Appellant again requests this Court to specifically review his claim of ineffective assistance of counsel regarding the trial judge's written instruction to the jury to continue deliberations. The Appellant's claim would entitle him to relief. For example, the trial court improperly coerced the jury into returning a guilty verdict of the stalking charge, i.e., that the accused had "intentionally and repeatedly followed or harassed" the victim after the jury informed the trial court that it was deadlocked on the underlying misdemeanor harassment/ domestic violence charge.

This Court in its discussion of the trial court's denial of the Appellant's Rule 32 petition in regards to his other claim of ineffective assistance of counsel stated that a charged offense is considered a lesser included offense if "it is established by proof of the same or fewer than all the facts required to establish the commission of the offense charged." §13A-1-9(a)(1), Ala. Code 1975. The indictment charging the Appellant with stalking states that the charge is premised on actions taken by the Appellant between March 24 and April 17, 2004. (Direct Appeal C. 13). The indictment charging the Appellant with domestic violence, however, states that the charge

is premised on an incident on March 30, 2004, in which the Appellant grabbed Callie Williams by her clothes and verbally threatened her. (R.58). Thus, separate evidence had to be presented regarding each charge. As such, domestic violence cannot be considered a lesser included offense encompassed in the stalking charge. It thus would have been improper for the Appellant's appellate counsel to make such an erroneous argument to this court. Therefore, the Appellant is not entitled to any relief as to this claim. This is a misstatement of the Appellant's claim of ineffective assistance of counsel in that Section 12-11-30, Ala. Code 1975 states, in pertinent part:

"(a) Felonies. All felony charges and misdemeanor or ordinance violations which are lesser included offenses within a felony charge or which arise from the same incident as a felony charge shall be prosecuted in circuit court.

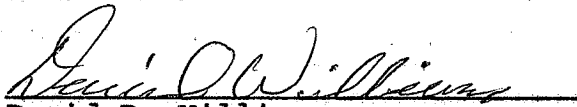
See also Davis v. State, 806 So.2d 404 (Ala.Crim.App. 2001).

The Appellant respectfully requests that this Court again review the Appellant's claim of ineffective assistance of counsel. A review of the Appellant's claim reveals that the alleged incident that support to had taken placed on March 30, 2004, for harassing his former common law wife was received into evidence to show the Appellant's "course of conduct" of repeatedly following or harassing her, as to the facts previously set forth in the Statement of the Facts. The testimony of the Appellant's misdemeanor harassment/domestic violence charge-even those he was acquitted of the charge-was necessary to establish a course of conduct by the Appellant.




CONCLUSION

The Appellant contends that the court's instruction violated the Supreme Court's holding in Ex parte Giles, 554 So.2d 1089 (Ala. 1987). Where all elements of an offense separate from offense charged are present in or included among elements of charged offense, such separate offense is a lesser included offense for which defendant may be convicted, though acquitted of the offense charged. To be necessarily included in the greater offense, the lesser must be such that it is impossible to commit the greater without first having committed the lesser. Ex parte N.W., 748 So.2d 190 (Ala. 1999). The Appellant respectfully requests that this Court will again review the record of the Appellant's claims of ineffective assistance of counsel and that it would than enter an order reversing the trial court's denial of the Appellant's Rule 32 petition.

  
David D. Williams  
Pro Se, Appellant  
AIS #169189, G4-D-238  
1000 St. Clair Road  
Springville, AL 35146-5582

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been delivered to the Court of Criminal Appeals for service on the Attorney General, this 28th day of August, 2006.

  
David D. Williams  
Pro Se, Appellant

**COURT OF CRIMINAL APPEALS**  
**STATE OF ALABAMA**

*Jordan 94838*

Lane W. Mann  
Clerk  
Gerri Robinson  
Assistant Clerk



P. O. Box 301555  
Montgomery, AL 36130-1555  
(334) 242-4590  
Fax (334) 242-4689

September 1, 2006

**CR-05-1451**

David Donnie Williams v. State of Alabama (Appeal from Bullock Circuit Court:  
CC04-144.60)

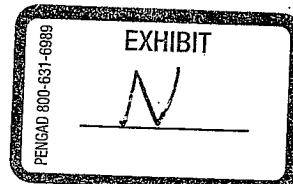
**NOTICE**

You are hereby notified that on September 1, 2006 the following action was taken in the above referenced cause by the Court of Criminal Appeals:

Application for Rehearing Overruled.

**Lane W. Mann, Clerk**  
**Court of Criminal Appeals**

cc: Hon. Wilbert M. Jernigan, Circuit Clerk  
David Williams, Pro Se  
Hon. Audrey Jordan, Asst. Attorney General



Jordan 94838

## IN THE SUPREME COURT OF ALABAMA

DAVID DONNIE WILLIAMS,

APPELLANT,

VS.

STATE OF ALABAMA,

APPELLEE.

## PETITION FOR WRIT OF CERTIORARI

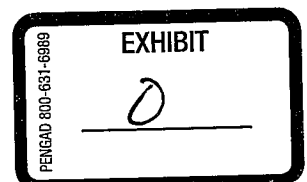
SC No. \_\_\_\_\_

(To be inserted by Clerk of the Supreme Court)

Appealed from the Circuit Court  
of Bullock County, Alabama  
Case No. CC04-144.60)

Court of Criminal Appeals  
Case No. CR-05-1451

David Donnie Williams  
Pro Se, Appellant  
AIS #169189, G3-B-214  
1000 St. Clair Road  
Springville, AL 35146-5582



DAVID DONNIE WILLIAMS

Appellant,

vs.

STATE OF ALABAMA,

Appellee.

Circuit Court of Bullock County

SC No. \_\_\_\_\_

(To be inserted by Clerk of the Supreme Court)

Petition for Writ of Certiorari

TO THE SUPREME COURT OF ALABAMA:

Comes your Petitioner David Donnie Williams and petitions this Court for a writ of Certiorari to issue to the Court of Criminal Appeals in the above-styled cause under Rule 39, ARAP, and shows the following:

1. Petitioner suffered a judgment in the Circuit Court of Bullock County, Alabama, on April 25, 2006. An application for rehearing was filed on August 28, 2006 and overruled on September 1, 2006.

2. A copy of the opinion of the appellate court is attached to this petition which shows the Court of Criminal Appeals case to be No. CR-05-1451.

3. Petitioner alleges as grounds for the issuance of the writ the following:

(1) The basis of this petition for the writ is that the decision of the appellate court is in conflict with a prior decision of the Supreme Court on the same point of law. In its opinion, the appellate court held: Petitioner's allegations that he received ineffective assistance of trial counsel are moot. Petitioner asserts that his attorney should have objected to the trial judge's written instruction to the jury to continue deliberations. The jury's note to the judge, however, indicted that the jurors were split on the domestic violence charge. (footnote added). Petitioner was acquitted of the domestic violence charge. Obviously, Petitioner was the beneficiary of the jury's continued deliberations. He is thus not entitled to relief. Given the foregoing, there could be no error on the part of appellate counsel for not raising this moot issue on appeal. In the case of Ex parte Giles, 554 So.2d 1089 (Ala. 1987), the Supreme Court held: Specifically, that trial court erred in reacting to jury's communication that it could not reach unanimous verdict. These statements of the law or the substance of the opinion are in conflict and the appellate court erred in failing to follow the decision of the Supreme Court on the same point of law.

(2) Another basis of this petition for the writ is that the decision of the appellate court is in conflict with a prior decision of the Supreme Court on the same point of law. In its opinion, the appellate court held: In regards to Petitioner's

other claim of ineffective assistance of counsel, it too is based on a faulty premise. A charged offense is considered a lesser included offense if "it is established by proof of the same or fewer than all the facts required to establish the commission of the offense charged." §13A-1-9(a)(1), Ala. Code 1975. The indictment charging Petitioner with stalking states that the charge is premised on actions taken by Petitioner between March 24 and April 17, 2004. (Direct Appeal C.13). The indictment charging Petitioner with domestic violence, however, states that the charge is premised on an incident on March 30, 2004, in which Petitioner grabbed the victim by her clothes and verbally threatened her. (R.58). Thus, separate evidence had to be presented regarding each charge. As such, domestic violence cannot be considered a lesser included offense encompassed in the stalking charge. It thus would have been improper for Petitioner's appellate counsel to make such an erroneous argument to this court. Therefore, Petitioner is not entitled to any relief as to this claim. In the case of Ex parte N.W., 748 So.2d 190 (Ala. 1999), the Supreme Court held: "' where all the elements of an offense separate from the offense charged are present or are included among elements of [the] charged offense, such separate offense is a lesser included offense for which [the] defendant may be convicted, though acquitted of the offense charged. To be necessarily included in the greater offense, the lesser must be such that

it is impossible to commit the greater without first having committed the lesser.'" These statements of the law or the substance of the opinion are in conflict and the appellate court erred in failing to follow the decision of the Supreme Court on the same point of law.

(3) Finally basis of this petition for the writ is that the decision of the appellate court is in conflict with its prior decisions on the same point of law. In its present decision the appellate court held: Specifically, domestic violence/harassment was not a lesser-included offense to the offense of stalking charged in the indictment. In the case of Mims v. State, 816 So.2d 509 (Ala.Crim.App. 2001), the appellate court held: Cf. The court in Culbreath held that a defendant's prior conviction for harassing his former wife was correctly received into evidence to show the defendant's "course of conduct" of repeatedly following or harassing her and that the court's admission of this evidence did not violate the defendant's protection against double jeopardy. Cf. Hayes v. State. We find that the testimony of the appellant's prior bad acts-even those for which he might have already been prosecuted-was properly admitted and was necessary to establish a course of conduct by the appellant.

As the Court of Criminal Appeals explained in Davis v. State, 806 So.2d 404 (Ala.Crim.App. 2001):

"[the] circuit court has exclusive original



jurisdiction over any misdemeanor charge that is a lesser included offense within a felony charge or that arises from the same incident as a felony charge."

(Quoting Casey v. State, 740 So.2d 1136 (Ala.Crim.App. 1998).

(emphasis added in Davis).

See: §12-11-30, Ala. Code 1975 states, in pertinent part:

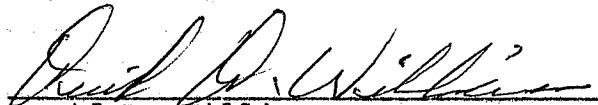
"(a) Felonies. All felony charges and misdemeanor or ordinance violations which are lesser included offenses within a felony charge or which arise from the same incident as a felony charge shall be prosecuted in circuit court."

See Also: Rule 2.2(a), Ala.R.Crim.P.

These statements of the law are in conflict and the issue is which holding should be followed on this principle of law.

Petitioner respectfully requests that after a preliminary examination, the writ of certiorari be granted and that this Court proceed under its rules to review the matters complained of, and to reverse the judgment of the Court of Criminal Appeals, and for such other relief as Petitioner may be entitled.

I certify that I have this day served copies of this petition on all other parties to the appeal in the court of appeals and the Court of Criminal Appeals.




David D. Williams  
Pro Se, Petitioner  
AIS #169189, G3-B-214  
1000 St. Clair Road  
Springville, AL 35146-5582

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing petition has been served upon the following individuals by mailing them a copy of same by U.S. Mail, postage prepaid, this 8th day of September, 2006:

Office of the Attorney General  
Criminal Appeals Division  
11 South Union Street  
Montgomery, Alabama 36130-0152

Alabama Court of Criminal Appeals  
300 Dexter Avenue  
P.O. Box 301555  
Montgomery, Alabama 36130-1555

  
\_\_\_\_\_  
David D. Williams

IN THE SUPREME COURT OF ALABAMA 94838

Jordan



October 13, 2006

1051744

Ex parte David Donnie Williams. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: David Donnie Williams v. State of Alabama) (Bullock Circuit Court: CC04-144.60; Criminal Appeals : CR-05-1451).

**CERTIFICATE OF JUDGMENT**

**Writ Denied**

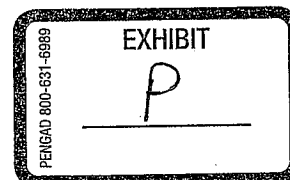
The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

WOODALL, J. - Nabers, C.J., and Lyons, Smith, and Parker, JJ., concur.

**I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.**

**Witness my hand this 13th day of October, 2006**

*Robert G. Esdale, Sr.*  
**Clerk, Supreme Court of Alabama**



COURT OF CRIMINAL APPEALS NO. CL-06-1048

## APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF Bullock COUNTY, ALABAMACIRCUIT COURT NO. CC 2004 - 144.61CIRCUIT JUDGE Hon. L. Bernard SmithartType of Conviction / Order Appealed From: Rule 32 PetitionSentence Imposed: DismissedDefendant Indigent: ☒ YES ☐ NODavid Donnie Williams

NAME OF APPELLANT

(Appellant's Attorney)

(Telephone No.)

(Address)

(City)

(State)

(Zip Code)

V.

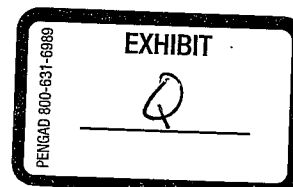
STATE OF ALABAMA

NAME OF APPELLEE

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter  
name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)



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David Donnie Williams

VS

State of Alabama

CC 2004 – 144.60

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[illegible]

# PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

**FILED IN OFFICE**

(Pursuant to Rule 32,  
Alabama Rules of Criminal Procedure)

**FEB 21 2007**
**CIRCUIT COURT, BULLOCK CO., ALA.**

Case Number

**CC** **04** **144.61**  
**ID** **YR** **NUMBER**

IN THE CIRCUIT COURT OF BULLOCK CO., ALABAMA

DAVID DONNIE WILLIAMS  
Petitioner (Full Name)

vs. STATE OF ALABAMA  
Respondent

[Indicate either the "State" or,  
if filed in municipal court, the  
name of the "Municipality"]

Prison Number 169189 Place of Confinement ST. CLAIR

County of conviction BULLOCK COUNTY

**NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY  
THE ACCOMPANYING INSTRUCTIONS.**

- Name and location (city and county) of court which entered the judgment of conviction or sentence under attack CIRCUIT COURT OF BULLOCK COUNTY, UNION SPRINGS, ALABAMA
- Date of judgment of conviction NOVEMBER 23, 2004
- Length of sentence 38 YEARS
- Nature of offense involved (all counts) STALKING  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- What was your plea? (Check one)
  - Guilty \_\_\_\_\_
  - Not guilty XXX
  - Not guilty by reason of mental disease or defect \_\_\_\_\_
  - Not guilty and not guilty by reason of mental disease or defect \_\_\_\_\_

6. Kind of trial: (Check one)

(a) Jury ~~xxx~~ \_\_\_\_\_

(b) Judge only \_\_\_\_\_

7. Did you testify at the trial?

Yes \_\_\_\_\_

No ~~xxx~~ \_\_\_\_\_

8. Did you appeal from the judgment of conviction?

Yes ~~xxx~~ \_\_\_\_\_

No \_\_\_\_\_

9. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court ALABAMA COURT OF CRIMINAL APPEALS

(2) Result AFFIRMED

(3) Date of result DECEMBER 16, 2005

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court ALABAMA COURT OF CRIMINAL APPEALS

(2) Result REHEARING OVERRULED

(3) Date of result JANUARY 13, 2006

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

(1) Name of court \_\_\_\_\_

(2) Result \_\_\_\_\_

(3) Date of result \_\_\_\_\_



Yes XXX No \_\_\_\_\_

11. If your answer to Question 10 was "yes", then give the following information in regard to the first such petition, application, or motion you filed:

- (a) (1) Name of court BULLOCK COUNTY CIRCUIT COURT  
(2) Nature of proceeding RULE 32 PETITION  
(3) Grounds raised DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes \_\_\_\_\_ No XXX

(5) Result SUMMARILY DENIED

(6) Date of result APRIL 25, 2008

(b) As to any second petition, application, or motion, give the same information:

- (1) Name of court \_\_\_\_\_  
(2) Nature of proceeding \_\_\_\_\_  
(3) Grounds raised \_\_\_\_\_

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes \_\_\_\_\_ No \_\_\_\_\_

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) As to any third petition, application, or motion, give the same information (attach additional sheets giving the same information for any subsequent petitions, applications, or motions):

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes \_\_\_\_\_

No \_\_\_\_\_

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion?

(1) First petition, etc.

Yes ~~xxx~~ \_\_\_\_\_

No \_\_\_\_\_

(2) Second petition, etc.

Yes \_\_\_\_\_

No \_\_\_\_\_

(2) Third petition, etc.

Yes \_\_\_\_\_

No \_\_\_\_\_

**ATTACH ADDITIONAL SHEETS GIVING THE SAME INFORMATION  
FOR ANY SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS.**(e) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

**GROUND(S) OF PETITION**

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

- \_\_\_\_\_ A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

For your information, the following is a list of the most frequently raised claims of constitutional violation:

- (1) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (2) Conviction obtained by use of coerced confession.
- (3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (5) Conviction obtained by a violation of the privilege against self-incrimination.
- (6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- xxx (7) Conviction obtained by a violation of the protection against double jeopardy.
- (8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (9) Denial of effective assistance of counsel.

This list is not a complete listing of all possible constitutional violations.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details.

xxx B. The court was without jurisdiction to render the judgment or to impose the sentence.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

xxx C. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

D. Petitioner is being held in custody after his sentence has expired.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

E. Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:

The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and

The facts are not merely cumulative to other facts that were known; and

The facts do not merely amount to impeachment evidence; and

If the facts had been known at the time of trial or sentencing, the result would probably have been different; and

The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

**F. The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.**

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

**13. IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:**

**"Successive Petitions.** The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exist why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice."

- A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes ~~XXX~~

No \_\_\_\_\_

- B. If you checked "Yes," give the following information as to earlier petition attacking this conviction or sentence:

(a) Name of court BULLOCK COUNTY CIRCUIT COURT

(b) Result SUMMARILY DENIED

(c) Date of result APRIL 25, 2005  
(attach additional sheets if necessary)

- C. If you checked the "Yes" line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labeled: "EXPLANATION FOR NEW GROUND(S) OF RELIEF."

On the separate sheet(s) explain why "good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and [why the] failure to entertain [this] petition will result in a miscarriage of justice."

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes \_\_\_\_\_

No ~~XXX~~

15. Give the name and address, if known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

(a) At preliminary hearing PAUL W. BRUNSON, JR., Esq., P.O. BOX 475

CLAYTON, ALABAMA 36016

(b) At arraignment and plea KRITH AUSDOM, Esq., 1224 RYAN STREET

MONTGOMERY, ALABAMA, 36107

(c) At trial \_\_\_\_\_

SAME

(d) At sentencing \_\_\_\_\_

SAME

(e) On appeal DONALD EUGENE SPENCER, JR., Esq., 547 SOUTH LAWRENCE STREET, MONTGOMERY, ALABAMA 36104

(f) In any post-conviction proceeding \_\_\_\_\_

N/A

(g) On appeal from adverse ruling in a post-conviction proceeding \_\_\_\_\_

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes \_\_\_\_\_ No XXX

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes \_\_\_\_\_ No XXX

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) And give date and length of sentence to be served in the future: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes \_\_\_\_\_ No \_\_\_\_\_

18. What date is this petition being mailed?

2-7-07

Wherefore, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

# PETITIONER'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I swear (or affirm) under penalty of perjury that the foregoing is true and correct.

Executed on 2-7-07  
(Date)

Paul Williams  
Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this the 7 day of February, 2007.

Notary Public  
Notary Public

OR \*

## ATTORNEY'S VERIFICATION UNDER OATH SUBJECT TO PENALTY FOR PERJURY

I Swear (or affirm) under penalty of perjury that, upon information and belief, the foregoing is true and correct. Executed on \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Signature of Petitioner's Attorney

SWORN TO AND SUBSCRIBED before me this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Name and address of attorney representing petitioner  
in this proceeding (if any)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* If petitioner is represented by counsel, Rule 32.6(a) permits either petitioner or counsel to verify the petition.

Rule 32.1 (b), A. R. Crim. P. The Trial Court Was  
Without Jurisdiction To Render The Judgment Or To  
Impose The Sentence:

EXPLANATION FOR NEW GROUNDS FOR RELIEF

The Petitioner avers that his claims are not procedurally barred because the ground's asserted arises pursuant to Rule 32. 1 (b).

Petitioner's challenge to the trial court's jurisdiction due to illegality of his conviction can be raised at any time. Rule 32. 2 (b), and (c), nor Rule 32.1 (b) sets out a period of limitation for the claims, as asserted by the petitioner alleging that the trial court was without jurisdiction to render the judgment or to impose the sentence. Grady v. State, 831 So. 2d 646, 648 (Ala.Crim.App. 2001).

A claim of a lack of jurisdiction to render the judgment or to impose the sentence is not precluded as a basis of relief, even though the claims could have been but was not raised at trial or on appeal or in a previous Rule 32 petition. Jones v. State, 724 So. 2d 75, 76 (Ala.Crim.App. 1998).

The Jurisdictional Claims Presented Are as Follows:

The Trial Court Was Without Jurisdiction To Render The Judgment Or To Impose The Sentence In Allowing Multiple Prosecutions On The Single Act Of Harassment.

The grounds presented by petitioner establish "good cause" for the court to proceed under its rules to adjudicate the merits of the claims and the failure to do so would constitute a failure to correct a manifest continuing miscarriage of justice. The claims asserted by the Petitioner is properly before the court for post conviction relief and this court has jurisdiction to review the claims pursuant to Rule 32 of the A.R.Crim.P., where the claims are not procedurally barred.

ARGUMENT

THE TRIAL COURT WAS WITHOUT SUBJECT MATTER JURISDICTION TO RENDER THE JUDGMENT OF CONVICTION FOR THE OFFENSE OF STALKING IN ABSENT AN INDICTMENT OR COMPLAINT ON THE CHARGE OF DOMESTIC VIOLENCE IN THE THIRD DEGREE.

Petitioner was indicted for the offense of Stalking, pursuant to Section 13A-6-90, Code of Alabama, 1975. Petitioner was also indicted for the offense of Domestic Violence in the third degree, pursuant to Section 13A-6-132, Code of Alabama, 1975.



Section 12-11-30, Code of Alabama, 1975, provides that: "The circuit court shall have exclusive original jurisdiction of all felony prosecutions and of misdemeanor or ordinance violations which are lesser included offenses within a felony charge or which arises from the same incident as a felony charge".

Rule 2. 2 (a), A.R.Crim.P. provides that: "All felony charges and misdemeanor or ordinance violation which are lesser included offenses within a felony charge or which arises from the same incident as a felony charge shall be prosecuted in the circuit court, except that the district court shall have concurrent jurisdiction to receive guilty pleas and to impose sentences in felony cases not punishable by sentence of death, including related and lesser included misdemeanor charges, and may hold preliminary hearings with respect to felony charges."

THE TRIAL COURT WAS WITHOUT SUBJECT MATTER JURISDICTION TO RENDER THE JUDGMENT OR TO IMPOSE THE SENTENCE IN ALLOWING MULTIPLE PROSECUTIONS ON THE SINGLE ACT OF HARASSMENT.

Petitioner was charged for the offense Domestic Violence in the Third Degree encompassed with the element of Harassment, pursuant to Section 13A-6-132, Code of Alabama, 1975. Petitioner was also charge in a separate indictment for the offense of STALKING in the First Degree, pursuant to Section 13A-11-8, Code of Alabama, 1975.

Petitioner contends that he cannot consistently with the double jeopardy clause be prosecuted of both Stalking and Domestic Violence with the element of harassment arising out of the same conduct. Because the former is an included offense of the latter rendering the prosecution for the offenses of both the same for purpose of jeopardy.

In Alabama, Section 13A-6-90 (a), Code of Alabama, 1975, the offense of Stalking provides that: "A person who intentionally and repeatedly follows or harasses another person and who makes a credible threat, either express or implied, with the intent to place that

person in reasonable fear of death or serious bodily harm is guilty of the crime of Stalking."

The Alabama stalking statute has three components:

**First**, the accused must intentionally commit the offense; **Second**, there must be a "credible threat"; **Third**, there must be an "act" of repeatedly following or harassing another person that places that person in reasonable fear of death or serious bodily harm. Culbreath v. State, 667 So. 2d 156 (Ala.Crim.App. 1995).

Section 13A-6-132 (a), Code of Alabama, 1975; Domestic Violence in the third Degree provides that:

(a.) "A person commits domestic violence in the third degree if the person committees the crime of assault in the third degree pursuant to Section 13A-6-22; the crime of menacing pursuant to Section 13A-6-23; the crime of reckless endangerment pursuant to Section 13A-6-24; the crime of criminal coercion pursuant to Section 13A-6-25; or the crime of harassmt pursuant to Section 13A-11-8; and the victim is a current or former spouse, parent, child, any person with whom the

defendant has a child in common, a present or former household member, or a person who has or had a dating or engagement relationship with the defendant. Domestic violence in the third degree is a Class A misdemeanor, except the defendant shall serve a minimum term of imprisonment of 48 hours in a city or county jail or detention facility without consideration of reduction in time for any second or subsequent conviction under this subsection."

Section 13A-6-90 (a), Code of Alabama, 1975, in connection with the crime of Stalking, "harasses" means: "Engaged in an intentional course of conduct directed at a specified person which alarms or annoys that person, or interferes with the freedom of movement of that person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress. Constitutionally protected conduct is not included within the definition of this term."

Section 12-11-30, Code of Alabama, 1975, provides that: "The circuit court shall have exclusive original jurisdiction of all felony prosecutions and of misdemeanor or ordinance violations which are lesser included offenses within a felony charge or which arises from the same incident as a felony charge".

The trial court was without jurisdiction in allowing multiple prosecutions on the single act of harassment because each statutory provision here does not require proof of an independent fact. The only requirement of the offense for Domestic violence is that the petitioner committed one of the predicate offenses listed in this section, in this case, **harassment**, and that the victim was within the statutory definition of included victims. The offense of Stalking requires *no proof* independent of Domestic Violence with the element of harassment. Mancuso v. State, 853 So. 2d 1024 (Ala.Crim.App. 2002).

The BLOCKBURGER test necessarily means that the offenses are the same for purpose of jeopardy.

Where the same act or transaction constitutes a violation of two distinct statutory provisions, the

test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of an additional fact which the other does not. Blockburger v. United States, 284 U. S. 299, 304, 52 S. CT. 180, 182, 76 L. Ed. 306 (1932).

It has been aptly noted that the BLOCKBURGER test is insufficient where the concern is not multiple charges under separate statutes, but rather successive prosecutions for conduct that may constitute the same act or transaction. Rashad v. Burt, 108 F. 3d 677 (6<sup>TH</sup> Cir. 1997).

"The assumption underlying the BLOCKBURGER Rule is that the legislature ordinarily does not intend to punish the same offense under two different statutes.

Accordingly, where two statutory provisions proscribe the same offense they are construed not to authorize cumulative prosecutions and punishments in the absence of a clear indication of contrary legislative intent". Whalen v. United States, 445 U. S. 684, 691-92, 100 S. CT. 1432, 1437-38, 63 L. Ed. 2d 715 (1980), quoted in Missouri v. Hunter, 459 U. S. 359, 367, 103 S. Ct. 673, 678, 74 L. Ed. 2d 535 (1983).

There is no indication of the intent on the part of the Alabama legislature to double punish Stalking and Domestic Violence encompassed with the element of harassment when the offenses is one of the same. Therefore, petitioner may not legally be prosecuted, convicted or sentenced for both Stalking and Domestic violence, because the element of harassment encompassed in the stalking statute is also a element of the charge for domestic violence and the lesser included offense of both. This is consistent with Ala, Code, 1975, Section 13A-1-8 (b), subsection (1) and (4).

Those Sections provides: "When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

- (1) One offense is included in the other, as defined in section 13A-1-9; or
- (4) The offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct.

Under the facts of this case domestic violence in the third degree encompassed with the predicated element of Harassment is also under the statutes the same offense as defined for Stalking in Section 13A-6-90. Crear v. State, 591 So. 2d 530, 534 (Ala.Crim.App. 1991).

The Rule against splitting one crime into separate offenses was stated in Hurst v. State, 86 Ala. 604, 6 So.120 (1889). "A single crime cannot be split up, or divided, into two or more offenses".

Alabama cases have long recognized that: Constitutional double jeopardy provisions, U. S. Const. Amend. V, and Alabama Constitution of 1901; Article 1, Section 9, prohibit the splitting of a single criminal act so as to justify multiple prosecutions for the identical criminal behavior. Smith v. State, 472 So. 2d 677, 684 (Ala.Crim.App. 1984).

The state could not convert a single crime into separate offenses by alleging the essential of harassment of the same victims in separate indictments. The predicated offense of harassment is the same



offense and constitutes one offense of domestic violence in the third degree.

**CONCLUSION**

All of the foregoing militates in favor of granting the Petitioner the relief requested on his Rule 32 petition. The petition contains a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. It is clear that the circumstances and conduct of the trial court in prosecuting the Petitioner for the charge of Stalking and Harassment/Domestic Violence at the same time renders the trial fundamentally unfair resulting in a manifesting miscarriage of justice. Therefore this Honorable Court shall make specific findings of fact relating to each material issue of fact presented.

Respectfully, \_\_\_\_\_

CC 04 144.61  
ID YR NUMBER(To be completed  
by Court Clerk)**IN FORMA PAUPERIS DECLARATION**Bullock County Circuit

[Insert appropriate court]

DAVID D. WILLIAMS  
(Petitioner)

vs.

STATE OF ALABAMA  
(Respondent(s))**FILED IN OFFICE**

FEB 21 2007

CLERK-REGISTER, BULLOCK CO., ALA.

**DECLARATION IN SUPPORT OF REQUEST TO PROCEED  
IN FORMA PAUPERIS**

I, DAVID D. WILLIAMS, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes \_\_\_\_\_ No ✓a. If the answer is "yes", state the amount of your salary or wages per month, and give the name and address of your employer.  
\_\_\_\_\_  
\_\_\_\_\_b. If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received.  
\_\_\_\_\_  
\_\_\_\_\_

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession, or other form of self-employment?

Yes \_\_\_\_\_ No ✓

b. Rent payments, interest, or dividends?

Yes \_\_\_\_\_ No ✓

c. Pensions, annuities, or life insurance payments?

Yes \_\_\_\_\_ No ✓

d. Gifts or inheritances?

Yes \_\_\_\_\_ No ✓

e. Any other sources?

Yes \_\_\_\_\_ No ✓2-21-07  
IN FORMA PAUPERIS  
GRANTED  
BT SCLP

If the answer to any of the above is "yes", describe each source of money and state the amount received from each during the past twelve months.

3. Do you own cash, or do you have money in a checking or savings account?

Yes \_\_\_\_\_ No ✓ \_\_\_\_\_

(Include any funds in prison accounts.)

If the answer is "yes", state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes \_\_\_\_\_ No ✓ \_\_\_\_\_

If the answer is "yes", describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 2-5-07  
(Date)

Daniel Williams  
Signature of Petitioner

169189

### CERTIFICATE

I hereby certify that the petitioner herein has the sum of \$ 0.48 on account to his credit at the institution where he is confined. I further certify that petitioner likewise has the foregoing securities to his credit according to the records of said St. Clair Cor. Fac. institution:

2.6.07

DATE

Lisa Zucker, Bus. Manager  
AUTHORIZED OFFICER OF INSTITUTION

## IN THE CIRCUIT COURT OF BULLOCK COUNTY

DAVID DONNIE WILLIAMS, AIS#169189,

Petitioner,

Vs.

STATE OF ALABAMA,

Respondent

**FILED IN OFFICE**CASE NO.: 2004-174207  
MAR 17 2007

CLERK-REGISTER, BULLOCK CO., ALA.

**MOTION TO DISMISS PETITION FOR  
RELIEF FROM CONVICTION OR SENTENCE  
(PURSUANT TO RULE 32)**

Comes now the State of Alabama, by and through its Assistant District Attorney, Boyd Whigham, and says as follows:

1. The pending Petition filed February 21, 2007, states that the ground for the Petition was as follows:

**ISSUES PRESENTED FOR REVIEW**

XXX (7) Conviction obtained by a violation of the protection against double jeopardy.

XXX B The court was without jurisdiction to render the judgment or to impose the sentence.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

XXX C. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports

2. The Petitioner was indicted for stalking in Case Number CC-2004-144 and was indicted for domestic violence/harassment in Case Number CC-2004-145 and was tried for both cases at the same time.

3. The Jury returned a verdict of guilty in Case Number CC-2004-144 Stalking and not guilty in Case Number CC-2004-145 Domestic Violence / Harassment, see Jury Verdict attached as Exhibit "A".

4. Petitioner's allegation of lack of jurisdiction is without merit and Petitioner was tried one time for both indictments and found guilty of only stalking in Case Number CC-2004-144, Stalking.

5. The Petitioner was convicted and sentenced in only one case – Case Number CC-2004-144.

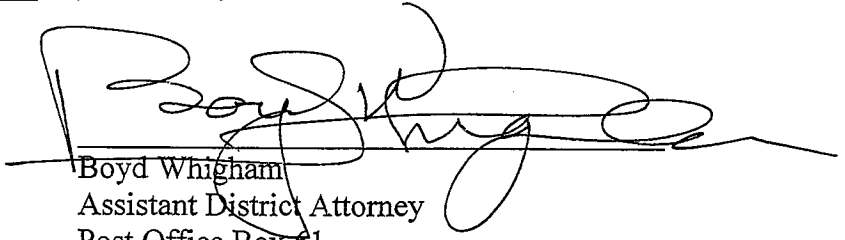
6. The Petitioner raised the same issue in his Rule 32 Petition dated March 28, 2006 which was denied on April 25, 2006, See Exhibit "B" and Exhibit "C".

7. The Petitioner fails to state a claim upon which relief may be granted.

8. No material issues of fact of law exists which would entitle the Petitioner to relief.

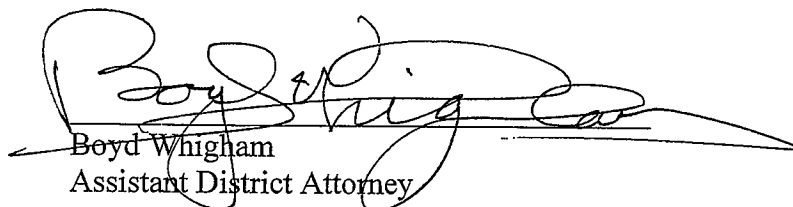
That the Petition should be dismissed or in the alternative each ground should be denied.

Respectfully submitted this 7 day of March, 2007.

  
Boyd Whigham  
Assistant District Attorney  
Post Office Box 61  
Eufaula, AL 36027

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 7 day of March, 2007, served a copy of the above and foregoing pleading on David Donnie Williams AIS # 169189, by placing a copy of same in the United States Mail, postage prepaid and addressed to him in care of St. Clair Correctional Facility, 1000 St. Clair Road, Springville, Alabama 35146.

  
Boyd Whigham  
Assistant District Attorney

EX-17

IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

STATE OF ALABAMA,  
Plaintiff,

vs.  
DAVID DONNIE WILLIAMS,  
Defendant.

CASE NO. CC-2004-144 & 145

JURY VERDICT

GUILTY VERDICT

We, the Jury, find the Defendant, David Donnie Williams, guilty of the offense of  
Stalking, as charged in the Indictment.

Alison V. Barnett  
Foreperson

NOT GUILTY VERDICT

We, the jury, find the Defendant, David Donnie Williams, not guilty of the offense of  
stalking.

\_\_\_\_\_  
Foreperson

GUILTY VERDICT

We, the jury, find the Defendant, David Donnie Williams, guilty of the offense of  
Harassment/Domestic violence as charged in the Indictment.

\_\_\_\_\_  
Foreperson

NOT GUILTY VERDICT

We, the jury, find the Defendant, David Donnie Williams, not guilty of the offense of  
Harrassment/Domestic violence.

Alison V. Barnett  
Foreperson

So Say We All.  
November 23, 2004

EX B

## IN THE CIRCUIT COURT OF BULLOCK COUNTY

FILED IN OFFICE

DAVID DONNIE WILLIAMS, AIS#169189,

Petitioner,

Vs.

STATE OF ALABAMA,

Respondent

APR 18 2006

CLERK-REGISTER, BULLOCK CO., ALA.

CASE NO.: 2004-144.60

MOTION TO DISMISS PETITION FOR  
RELIEF FROM CONVICTION OR SENTENCE  
(PURSUANT TO RULE 32)

Comes now the State of Alabama, by and through its Assistant District Attorney, Boyd Whigham, and says as follows:

1. The pending Petition dated March 28, 2006 and in forma pauperis status granted April 11, 2006, states that the ground for the Petition was a follows:

ISSUES PRESENTED FOR REVIEW

A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

B. The court was without jurisdiction to render the judgment or to impose the sentence.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

2. The Petitioner attached a 4 page brief with attachment from the brief in the Court of Criminal Appeal and portions of the transcript.



3. The Petitioner raises the issue that the Trial Judge on Notice from the jury that they could not reach a decision and the Trial Judge sent word back to the jury "to keep deliberating".

4. This response was proper and within the discretion of the Trial Judge. The Trial Judge is not required to bring the jury back into the Court for any instruction, when he merely instructs them by a note to keep deliberating.

5. The next allegation by Petitioner is that it was ineffective assistance of counsel for Petitioner's Trial counsel not to have objected. The issue is precluded pursuant to Rule 32.2(a)(5) which could have been raised on appeal. Since counsel were not the same attorney. Even if not precluded it is not a valid issue because the trial courts action was proper.

6. Petitioner claim that the jury verdict form found him not guilty of a "lesser included offence" relating to the felony charge of stalking. This is not the circumstances of the trial.

7. Petitioner was charged in case number CC-2004-145 with Domestic Violence 3<sup>rd</sup> Degree/Harassment and in case number CC-2004-144 with stalking and both case were tried together and the Petitioner was found not guilty of "harassment/domestic violence". See Exhibit "A".

8. The Petitioner was represented by capable counsel on appeal and nothing in the record would indicate that appeal counsel was ineffective. The issue that the Petitioner sets forth is "ineffective assistance of counsel", which fails to meet the requirements of Rule 32.6(b). The grounds raised as to ineffective assistance of counsel fail to rise to the level that the courts have recognized as ineffective.

9. In order to constitute cause sufficient to overcome procedural default, a counsel's performance must be constitutionally ineffective under the standards of Strickland v. Washington, 466 U. S. 6689, 104 S. Ct. 2052, 80L. Ed 2d 674 (1984). Jackson v. Herring, 42 F. 3d 1350, 1358 (11<sup>th</sup> Cir. 1995); Devier v. Zant, 3F. 3d 1445, 1456 (11<sup>th</sup> Cir. 1993); Smelchor v. Attorney General of Alabama, 947 F. 2d 1472, 1475 (11<sup>th</sup> Cir. 1991).

In Strickland the Court set forth the text for determining whether counsel's performance "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Id., 466, 104 S. Ct. at 2064.

This test has two prongs:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixty Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive defendant of a fair trial, a trial whose result is reliable.

Under Strickland, counsel's performance is measured for "reasonableness under professional prevailing norms".

10. The claim of ineffective assistance of counsel is without merit.

*"When reviewing whether an attorney is effective, courts 'should always presume strongly that counsel's performance was reasonable and adequate'." Rogers v. Zant, 13 F. 3d 384, 386 (11<sup>th</sup> Cir. 1994).*

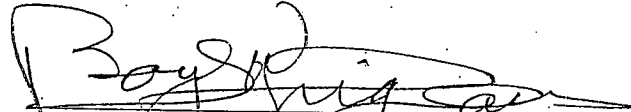
The court has full knowledge of the Attorney's performance, which was reasonable and adequate.

11. The Petitioner fails to state a claim upon which relief may be granted.

12. No material issues of fact or law exists which would entitle the Petitioner to relief.

That the Petition should be dismissed or in the alternative each ground should be denied.

Respectfully submitted this 18 day of April, 2006.

  
Boyd Whigham, Assistant District Attorney  
Post Office Box 61  
Eufaula, AL 36027

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 18 day of April, 2006, served a copy of the above and foregoing pleading on David Donnie Williams AIS # 169189, by placing a copy of same in the United States Mail, postage prepaid and addressed to him in care of St. Clair Correctional Facility, 1000 St. Clair Road, Springville, Alabama 35146.

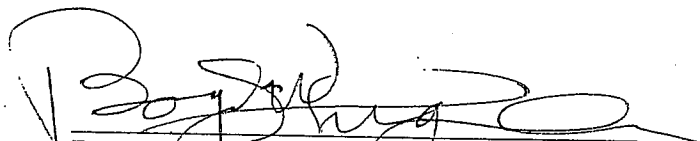
  
Boyd Whigham, Assistant District Attorney

Exhibit "A"

NO.: \_\_\_\_\_

G. J. No. BF-04-035

A TRUE BILL, presented to the judge Presiding in open Court by the Foreperson of this Grand Jury, and filed in open court this \_\_\_\_\_ day of \_\_\_\_\_.

Leon Battle  
Grand Jury Foreman

\_\_\_\_\_  
Clerk of the Circuit Court  
of Bullock County  
Third Judicial Circuit

10/19/04  
Date

**INDICTMENT**

**THE STATE OF ALABAMA**

vs.

**DAVID DONNIE WILLIAMS**

Address: 505 JOHNSON STREET, UNION SPRINGS, AL 36089  
alias

None Reported

**CHARGES:**

DOMESTIC VIOLENCE THIRD DEGREE - HARASSMENT(13A-6-132)

CLASS

TYPE

A

M

**WITNESSES:**

CALLIE WILLIAMS, 1010 MLK BLVD, LOT #2, UNION SPRINGS, AL 36089  
LAKISHA WILLIAMS, 1010 MLK BLVD, LOT 2, UNION SPRINGS, AL 36089

Previous Bond \$ \_\_\_\_\_ Bail fixed at \$ \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Judge Presiding

THE STATE OF ALABAMA  
Bullock COUNTY

CIRCUIT COURT

2004

BOYD WHIGHAM  
DISTRICT ATTORNEY  
THIRD JUDICIAL CIRCUIT

NO. : \_\_\_\_\_

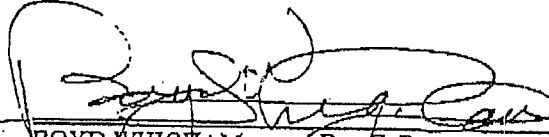
G. J. No.BF-04-035

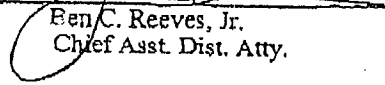
THE STATE OF ALABAMA, Bullock COUNTY  
Circuit Court - Third Judicial Circuit

COUNT 1

The Grand Jury of said county charge that, before the finding of this indictment, DAVID DONNIE WILLIAMS, whose name is otherwise unknown to the Grand Jury, did on or about March 30, 2004, commit the crime of Harassment (Section 13A-11-8 of the Code of Alabama), with intent to harass, annoy, or alarm another person, to-wit: CALLIE WILLIAMS, did direct a threat, verbal or nonverbal, to-wit: grabbed her by her clothes and verbally threatened her, with the intent to carry out the threat, toward another person, to-wit: CALLIE WILLIAMS, a reasonable person and target of the threat, causing her to fear for her safety, with the victim being a current or former spouse, parent, child, a person with whom he/she has a child in common, a present or former household member, or a person whom he/she has or had a dating relationship, in violation of Section 13A-6-132 of the Code of Alabama,

against the peace and dignity of the State of Alabama.

  
BOYD WHIGHAM  
District Attorney  
Third Judicial Circuit

  
Ben C. Reeves, Jr.  
Chief Asst. Dist. Atty.

**EXC**IN THE CIRCUIT COURT OF BULLOCK COUNTY **FILED IN OFFICE**

DAVID DONNIE WILLIAMS, AIS#169189, )

APR 25 2006

Petitioner, )

CLERK-REGISTER, BULLOCK CO., ALA.

Vs. )

CASE NO.: 2004-144.60

STATE OF ALABAMA, )

Respondent )

ORDER

This matter coming before the Court on Rule 32 Petition and response by the State, the Court makes findings of facts and conclusion of law as follows:

The Court finds that the note from the jury that they could not reach a decision and the response by the Trial Court was proper. The failure of the Trial counsel to object to the courts handling of this matter does not show ineffective assistance of trial counsel.

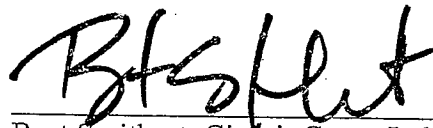
The Court further finds that ineffective assistance of trial counsel is precluded under the provisions of Rule 32.2(a)(5) in that appeal counsel could have raised this matter on appeal.

The Court finds that the Petition is without merit, in that the Petitioner was represented by an experienced attorney, and the records does not support the allegations of ineffective assistance of counsel. Ineffective assistance of appeal counsel as it relates to the jury verdict on two cases on one verdict form is not error and does not indicate ineffective assistance of counsel.

The Petitioner has failed to meet his burden of proof as provided by Rule 32.3.

It is therefore, **ORDERED** and **ADJUDGED** that the Petition be dismissed pursuant to the provisions of Rule 32.3(a)(5) and 32.3. All issues are hereby **DISMISSED** pursuant to Rule 32.7(d), Alabama Rules of Criminal Procedure.

**ORDERED** and **ADJUDGED** this 25<sup>th</sup> day of April, 2005.

A handwritten signature in black ink, appearing to read "B. Smithart", written over a horizontal line.

Burt Smithart, Circuit Court Judge

**FILED IN OFFICE****IN THE CIRCUIT COURT OF BULLOCK COUNTY**

MAR 15 2007

CLERK-REGISTER, BULLOCK CO., ALA.

DAVID DONNIE WILLIAMS, AIS#169189, )

Petitioner, )

Vs. )

CASE NO.: 2004-144.61

STATE OF ALABAMA, )

Respondent )

**ORDER**

This matter coming before the Court on Rule 32 Petition and response by the State, the Court makes findings of facts and conclusion of law as follows:

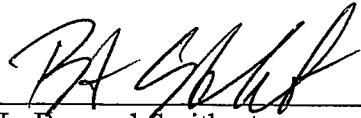
The Court finds that the allegation that the Court was without jurisdiction for allowing multiple prosecutions is without merit and does not accurately reflect the circumstances of Petitioner's Conviction.

The Court further finds that the allegation of double jeopardy is without merit.

The Petitioner has failed to meet his burden of proof as provided by Rule 32.3 and the allegation of lack of jurisdiction pursuant to Rule 32.1(b) and that the sentence exceeds the maximum authorized by law pursuant to Rule 32.1(c) are without merit.

It is therefore, **ORDERED** and **ADJUDGED** that the Petition be dismissed pursuant to the provisions of Rule 32.3(a)(5), Rule 32.2(b), Rule 32.2(c) and Rule 32.3. All issues are hereby **DISMISSED** pursuant to Rule 32.7(d), Alabama Rules of Criminal Procedure.

**ORDERED** and **ADJUDGED** this 15<sup>th</sup> day of March, 2007.

  
\_\_\_\_\_  
L. Bernard Smithart  
Circuit Court Judge



IN THE CIRCUIT COURT OF BULLOCK COUNTY, ALABAMA

FILED IN OFFICE

MAR 15 2007

CLERK-REGISTER, BULLOCK CO., ALA.

DAVID DONNIE WILLIAMS  
Petitioner,

Vs.

Case No.: CC-2004-144 & 145

STATE OF ALABAMA  
Respondents,

PETITIONER'S RESPONSE TO REPENDENTS MOTION  
TO DISMISS PETITION FOR RELIEF FROM CONVICTION  
OR SENTENCE PURSUANT TO RULE 32

Comes now the petitioner David Donnie William [hereinafter Williams] in the above styled cause of Action and Request of this Court to deny the Respondents Motion to dismiss and set this cause for an Evidentiary Hearing on the following grounds to wit:

PROCEDURE HISTORY THUS FAR

1 Williams has filed the following specific claim with this trial court:

"The Trial court was without subject matter jurisdiction to Render the Judgment or to Impose the sentence in allowing multiple prosecution on the single act of Harrassment".

2. The State of Alabama has asked of this trial court to dismiss this claim on page 2 of it's Motion to Dismiss as follows:

"Petitioner's allegation of lack of jurisdiction is without merit and petitioner was tried one time for both indictments and found guilty of only stalking in Case No. CC-04-144 stalking".

Williams claim is a Jurisdictional claim and the State of Alabama ground for Dismissal is without merit.

Williams Exhibit A is the verdict form in which the jury returned it's verdict, stating we find defendant not guilty as follows:

"NOT GUILTY VERDICT"

We the jury, find the defendant,  
David Donnie Williams, not guilty  
of the offense of Harrassment/  
Domestic Violence."

This not guilty verdict of "Harrassment" was an implied Acquittal of stalking as Harrassment was underlying element of the offense stalking and if William was found not guilty of harrassment, then he was Acquitted of the Greater Charge of Stalking which couldn't exist unless Williams is guilty of Harrassment.

The trial court once informed of the jury's not guilty verdict of Harrassment, did not have subject matter jurisdiction to accept the jury's verdict for stalking or pronouncing judgment and sentence.

Williams avers to this Court that when the jury found him not guilty of "Harrassment" it was an implied Acquittal for Stalking, that could not be the basis of accepting a verdict and pronouncing by the trial court.

It is without question that one of the essenital elements of violation Section 13A-6-90 Stalking, is "Harrasses" another person:

13A-6-90. Stalking

- (a) A person who intentionally and repeatedly follows or harrasses another person and who makes a credible

Harassment according to section 13-A-11-8, Code Of Alabama 1975 is:

- "(1) A Person commits the crime of harassment if, with intent to harass, annoy, or alarm another person, he or she either:
- a. Strikes, shoves, kicks, or otherwise touches a person or subjects him or her to physical contact.
  - b. Directs abusive or obscene language or makes an obscene gesture towards another person.
- (2) For purposes of this section, harassment shall include a threat, verbal or nonverbal, made with the intent to carry out the threat, that would cause a reasonable person who is the target to the threat to fear for his or her safety."

Section 13A-11-8, Code Of Alabama 1975, "HARASSMENT", is inclusive under Section 13A-6-9, Code Of Alabama 1975, "STALKING".

The evidence during Williams trial the jury considered for a finding of guilty was that he repeatedly came to the victim home, job, children school, and called her; all constituting one crime "HARASSMENT". [Please take judicial notice of the records].

The State of Alabama also made the element of Domestic Violence in the third degree, § 13A-6-132, Code of Alabama 1975, "Harassment" inclusive, to charge the crime.

In a similar case wherein a Jury found the defendant not guilty of the lesser charge that was an element of the greater charge. The Supreme Court of Alabama in Brabley v. State, 2005 Ala. LEXIS 166, states as follows:

"The Jury verdict at the end of Bradley's trial represented more than an implicit acquittal of the charge of Robbery in the first degree; under the instructions by which the jury was bound, it's verdict included an explicit acquittal with respect to the offense of Robbery in the first degree. The Jury was instructed that only if it found that the State had failed to prove all of the elements of Robbery in the first degree, that the jury could not find Bradley guilty of that offense, should

it "in that event",  
.... move to consideration of the lesser included offense of Assault in the second degree".

The Law is well settled that this Court will presume that the jury followed the trial courts instructions unless there is evidence to the contrary. "Wooten Vs. Ivey, 877 So.2d 585, 590 (Ala. 2003) The verdict form, which listed in descending order the available verdict options by which Bradley could be found guilty of Robbery in the first degree, Assault in the second degree, or Assault in the third degree or be found simply not guilty, conformed to the jury instructions, so that the verdict form contained no option that stated that Bradley was not guilty of robbery in the first degree. The verdict of not guilty of first degree Robbery was an explicit condition precedent, under the trial courts instructions, to the jury proceeding to consider the offenses of Assault in the second degree and Assault in the third degree. Accordingly, proceeding under those instructions and using the conforming verdict form, the jury clearly declared by it's verdict that it had found Bradley not guilty of the offense of Robbery in the first degree."

This violation of Williams Rights now turns to this Courts power to accept the Jury Verdict for Stalking, pronounce judgment and sentence. Williams position is that this Court did not have Jurisdiction to accept the Jury's verdict because the Jury had found him not guilty of "Harrassment", the necessary element of "Stalking" in this case as charged to the Jury. Nor did the Double Jeopardy clause allow the conviction and sentencing of Williams for "Stalking", when Williams was found not guilty of "Harrassment"!

Williams reasoning is also supported and spoken to in Brabley V. State, supra, as follows:

"We affirm the decision of the Court of Criminal Appeals that "the Jury's verdict finding Bradley guilty of Second Degree Assault Effectively Acquitted Bradley of First Degree Robbery as charged in the indictment; Thus Bradley cannot be retried for Robbery in the first degree".

Williams case effectively follows the reasoning of Bradley

supra, as Williams was indicted for three (3) charges; "Stalking", "Harrassment", and "Domestic Violence" that all contained an element of "Harrassment". Once the Jury verdict finding Williams not guilty of "Harrassment" it effectively acquitted Williams of "Stalking", as charged in his indictment, thus Williams is unlawfully imprisoned for a crime he is innocent of and cannot be retried for Stalking.

WHEREFORE, for the above said reasons, Williams prays that the States Motion to Dismiss be denied and this cause be set for an Evidentiary Hearing and the Appointment of Counsel.

Respectfully Submitted,



DAVID D. WILLIAMS  
169189 /H1-9A  
1000 ST. CLAIR RD  
SPRINGVILLE, ALABAMA  
35146

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 14th day of March 2007, served a copy of the foregoing Response upon D.A. Bob Whigham at: P.O. Box 674, Clayton, Alabama 36016-0674 via., United States mail, postage prepaid and properly addressed.



David D. Williams

In the Circuit court of Bullock  
County, Alabama

David William  
Petitioner, Pro Se,

vs.

Case No. CC-04-144.61

State of Alabama,  
Respondent,

Notice of Appeal to the Court of Criminal Appeals  
of Alabama

Notice is hereby given that David Williams, petitioner pro se, appeals to the above named court from the judgment entered in this case on the 15 day of March, 2007, denying his Rule 32 post conviction petition.

Respectfully Submitted,

x David Williams

Petitioner, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that I have this 21<sup>st</sup> day of March, 2007.

served a copy of the foregoing, upon the following, by placing a copy of the same in the U.S. mail, postage prepaid and properly addressed:

Wilbert M. Jernigan, Clerk

Courthouse, 217 N. Prairie St.

P.O. Box 230

Union Springs, Al. 36089-230

Lane Mann, Clerk

Court of Criminal Appeals

300 Dexter Ave

Montgomery, Al. 36130

Respectfully Submitted,

David Williams

169189 D-13

1000 St. Clair Rd.

Springville, Al. 35146



44

State of Alabama Unified Judicial System Form ARAP-26 (front) 8/91	<b>COURT OF CRIMINAL APPEALS</b> <b>DOCKETING STATEMENT</b>	Criminal Appeal Number  
--	--	--------------------------------

**A. GENERAL INFORMATION:**

☒ CIRCUIT COURT    ☐ DISTRICT COURT    ☐ JUVENILE COURT OF \_\_\_\_\_ COUNTY  
DAVID WILLIAM'S, Appellant

V.    ☒ STATE OF ALABAMA    ☐ MUNICIPALITY OF \_\_\_\_\_

Case Number <u>CC-04-144.61</u>	Date of Complaint or Indictment	Date of Judgment/Sentence/Order <u>March 15, 2007</u>
Number of Days of Trial/Hearing	Date of Notice of Appeal Oral: _____	Written: <u>March 21, 2007</u>
Indigent Status Requested: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No                      Indigent Status Granted: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		

**B. REPRESENTATION:**

Is Attorney Appointed or Retained? <input type="checkbox"/> Appointed <input type="checkbox"/> Retained.                      If no attorney, will appellant represent self? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Appellant's Attorney (Appellant if pro se) (Attach additional pages if necessary)	
<u>PRO-SE David William's</u>	
Address <u>1000 St. Clair Rd.</u>	City <u>Springville Ala.</u>
State <u>Ala.</u>	Zip Code <u>35146</u>

**C. CODEFENDANTS:** List each CODEFENDANT and the codefendant's case number.

Codefendant	Case Number
Codefendant	Case Number
Codefendant	Case Number

N/A

**D. TYPE OF APPEAL:** Please check the applicable block.

- |  |  |  |   |
|--|--|--|---|
| 1 <input type="checkbox"/> State Conviction                  | 4 <input type="checkbox"/> Pretrial Order        | 7 <input type="checkbox"/> Juvenile Transfer Order | 10 <input type="checkbox"/> Other (Specify) _____ |
| 2 <input checked="" type="checkbox"/> Post-Conviction Remedy | 5 <input type="checkbox"/> Contempt Adjudication | 8 <input type="checkbox"/> Juvenile Delinquency    | _____   |
| 3 <input type="checkbox"/> Probation Revocation              | 6 <input type="checkbox"/> Municipal Conviction  | 9 <input type="checkbox"/> Habeas Corpus Petition  | _____   |

**E. UNDERLYING CONVICTION/CHARGE:** Regardless of the type of appeal checked in Section D, please check the box beside each offense category for which the appellant has been convicted or charged as it relates to this appeal. Also include the applicable section of the Code of Alabama for State convictions.

- |   |  |  |
|---|--|--|
| 1 <input type="checkbox"/> Capital Offense - § _____                  | 6 <input type="checkbox"/> Trafficking in Drugs - § _____            | 11 <input type="checkbox"/> Fraudulent Practices - § _____           |
| 2 <input type="checkbox"/> Homicide - § _____                         | 7 <input type="checkbox"/> Theft - § _____                           | 12 <input type="checkbox"/> Offense Against Family - § _____         |
| 3 <input type="checkbox"/> Assault - § _____                          | 8 <input type="checkbox"/> Damage or Intrusion to Property - § _____ | 13 <input type="checkbox"/> Traffic - DUI - § _____                  |
| 4 <input type="checkbox"/> Kidnapping/Unlawful Imprisonment - § _____ | 9 <input type="checkbox"/> Escape - § _____                          | 14 <input type="checkbox"/> Traffic - Other - § _____                |
| 5 <input type="checkbox"/> Drug Possession - § _____                  | 10 <input type="checkbox"/> Weapons/Firearms - § _____               | 15 <input type="checkbox"/> Miscellaneous (Specify): _____ - § _____ |

**F. DEATH PENALTY:**

Does this appeal involve a case where the death penalty has been imposed?    ☐ Yes    ☐ No

**G. TRANSCRIPT:**

- Will the record on appeal have a reporter's transcript?    ☐ Yes    ☒ No
- If the answer to question "1" is "Yes," state the date the Reporter's Transcript Order was filed. \_\_\_\_\_ (Date)
- If the answer to question "1" is "No":
  - Will a stipulation of facts be filed with the circuit clerk?    ☐ Yes    ☐ No
  - Will the parties stipulate that only questions of law are involved and will the trial court certify the questions?    ☐ Yes    ☐ No

NOTE: If the appeal is from the district or juvenile court and the answer to question "1" is "No," then a positive response is required for question 3(a) or 3(b).

Form ARAP- 26 (back) 8/91

## COURT OF CRIMINAL APPEAL, DOCKETING STATEMENT

H. POST-JUDGMENT MOTIONS: List all post-judgment motions by date of filing, type, and date of disposition (whether by trial court order or by the provisions of Rules 20.3 and 24.4 (ARCrP)).

DATE OF FILING			TYPE OF POST-JUDGMENT MOTION	DATE OF DISPOSITION		
Month	Day	Year		Month	Day	Year
			N/A.			

I. NATURE OF THE CASE: Without argument, briefly summarize the facts of the case.

Petitioner Filed A Rule 32 Petition in the original Court of Conviction, in which was denied.

J. ISSUE(S) ON APPEAL: Briefly state the anticipated issues that will be presented on appeal. (Attach additional pages if necessary.)

Whether the Trial Court Abused his discretion when ~~the~~ denied the petition.

K. SIGNATURE:

March 21, 2007  
Date

 David Williams  
Signature of Attorney/ Party Filing this Form

State of Alabama Unified Judicial System Form ARAP-1C      8/91	<b>REPORTER'S TRANSCRIPT ORDER -- CRIMINAL</b> <small>See Rules 10(c) and 11(b) of the Alabama Rules of Appellate Procedure (A.R. App.P.)</small>	Criminal Appeal Number _____
---	--	---------------------------------

TO BE COMPLETED BY COUNSEL FOR THE APPELLANT OR BY THE APPELLANT IF NOT REPRESENTED AND FILED WITH THE WRITTEN NOTICE OF APPEAL OR FILED WITHIN 7 DAYS AFTER ORAL NOTICE OF APPEAL IS GIVEN.

☒ CIRCUIT COURT    ☐ DISTRICT COURT    ☐ JUVENILE COURT OF \_\_\_\_\_ COUNTY

David Williams

v. ☒ STATE OF ALABAMA    ☐ MUNICIPALITY OF \_\_\_\_\_, Appellant

Case Number <u>CC-04-144.61</u>	Date of Judgment/Sentence/Order <u>March 15, 2007</u>
Date of Notice of Appeal	Indigent Status Granted: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Oral: _____	Written: <u>March 21, 2007</u>

**PART 1. TO BE SIGNED IF THE APPEAL WILL NOT HAVE A COURT REPORTER'S TRANSCRIPT:**

I CERTIFY THAT NO REPORTER'S TRANSCRIPT IS EXPECTED AND THAT THE RECORD ON APPEAL SHALL CONSIST OF THE CLERK'S RECORD ONLY. IF THE APPEAL IS FROM DISTRICT COURT OR JUVENILE COURT, I ALSO CERTIFY (1) THAT A STIPULATION OF FACTS WILL BE INCLUDED IN THE CLERK'S RECORD AND THAT THE APPELLANT WAIVES HIS RIGHT TO A JURY TRIAL IF SO ENTITLED; OR (2) THAT THE PARTIES HAVE STIPULATED THAT ONLY QUESTIONS OF LAW ARE INVOLVED AND THAT THE QUESTIONS WILL BE CERTIFIED BY THE JUVENILE/DISTRICT COURT FOR INCLUSION IN THE CLERK'S RECORD (SEE RULE 28(A)(1), ALABAMA RULES OF JUVENILE PROCEDURE, AND §12-12-72, CODE OF ALABAMA 1975).

David Williams  
Signature

March 21, 2007  
Date

David William  
Print or Type Name

**PART 2. DESIGNATION OF PROCEEDINGS TO BE TRANSCRIBED:** Request is hereby made to the court reporter(s) indicated below for a transcript of the following proceedings in the above referenced case (see Rule 10(c)(2), Alabama Rules of Appellate Procedure (A.R. App.P.)):

**MARK PROCEEDINGS REQUESTED:**

COURT REPORTER(S)

A. ☐ TRIAL PROCEEDINGS - Although this designation will include the judgment and sentence proceedings, a transcript of the organization of the jury and arguments of counsel must be designated separately.

B. ☐ ORGANIZATION OF THE JURY - This designation will include voir dire examination and challenges for cause. Note that in noncapital cases the voir dire of the jury will not be recorded unless the trial judge so directs. (See Rule 19.4, ARCP.)

C. ☐ ARGUMENTS OF COUNSEL - Note that in noncapital cases the arguments of counsel will not be recorded unless the trial judge so directs. (See Rule 19.4, ARCP.)

Inapplicable

IN ADDITION TO ANY PROCEEDINGS DESIGNATED ABOVE, SPECIAL REQUEST IS HEREBY MADE TO INCLUDE THE FOLLOWING PROCEEDINGS IN THE REPORTER'S TRANSCRIPT PORTION OF THE RECORD ON APPEAL. (ATTACH ADDITIONAL PAGES IF NECESSARY):

ADDITIONAL PROCEEDINGS REQUESTED

DATE

COURT REPORTER(S)

D. \_\_\_\_\_

E. A Complete Copy of the Clerks Record on Appeal

F. \_\_\_\_\_

G. \_\_\_\_\_

**IMPORTANT NOTICE:** The court reporter who reported the proceedings for which a transcript is requested must be identified on this form to be effective. Additionally, it is important to note that the appellant may not be permitted to raise any issue on appeal relating to any proceedings in the case that are not specifically designated on this form for inclusion in the reporter's transcript. A general designation such as "all proceedings" is not sufficient. (See Rule 10(c)(2), A.R. App.P.)

**PART 3. MUST BE SIGNED IF THE APPEAL WILL HAVE A COURT REPORTER'S TRANSCRIPT:**

I CERTIFY THAT I HAVE DISTRIBUTED THIS FORM AS SET OUT BELOW. I ALSO CERTIFY (1) THAT I HAVE MADE SATISFACTORY FINANCIAL ARRANGEMENTS WITH EACH COURT REPORTER LISTED ABOVE FOR PREPARING HIS OR HER PORTION OF THE REPORTER'S TRANSCRIPT HEREIN REQUESTED; OR (2) THAT THE APPELLANT PROCEEDED AT TRIAL AS AN INDIGENT AND THAT THAT STATUS HAS NOT BEEN REVOKED; OR, (3) THAT THE APPELLANT HAS BEEN GIVEN PERMISSION TO PROCEED ON APPEAL IN FORMA PAUPERIS.

Signature

Date

Print or Type Name

DISTRIBUTION: Original filed with Clerk of Trial Court and copies mailed to: (1) Clerk of the Court of Criminal Appeals, (2) \_\_\_\_\_

**NOTICE OF APPEAL TO THE ALABAMA COURT OF CRIMINAL APPEALS  
BY THE TRIAL COURT CLERK**

David Donnie Williams

V.

☒

STATE OF ALABAMA

APPELLANT'S NAME

CITY OF \_\_\_\_\_

(as it appears on the indictment)

APPELLEE

☒

CIRCUIT

☐

DISTRICT

☐

JUVENILE COURT OF

Bullock

COUNTY

CIRCUIT/DISTRICT/JUVENILE JUDGE: Hon. L. Bernard Smithart

DATE OF NOTICE OF APPEAL: March 21, 2007

(NOTE: If the appellant is incarcerated and files notice of appeal, this date should be the date on the certificate of service, or if there was no certificate of service, use the postmark date on the envelope.)

## INDIGENCY STATUS:

Granted Indigency Status at Trial Court:

Appointed Trial Counsel Permitted to Withdraw on Appeal:

Indigent Status Revoked on Appeal:

☒ Yes ☐ No☐ Yes ☒ No☐ Yes ☒ No

## DEATH PENALTY:

Does this appeal involve a case where the death penalty has been imposed?

☐ Yes ☒ No

## TYPE OF APPEAL: (Please check the appropriate block.)

☐ State Conviction☒ Rule 32 Petition☐ Probation Revocation☐ Mandamus Petition☐ Pretrial Appeal by State☐ Contempt Adjudication☐ Municipal Conviction☐ Writ of Certiorari☐ Juvenile Transfer Order☐ Juvenile Delinquency☐ Habeas Corpus Petition☐ Other(specify) \_\_\_\_\_

IF THIS APPEAL IS FROM AN ORDER DENYING A PETITION (I.E., RULE 32 PETITION, WRIT OF HABEAS CORPUS, ETC.) OR FROM ANY OTHER ORDER ISSUED BY THE TRIAL JUDGE, COMPLETE THE FOLLOWING:

TRIAL COURT CASE NO.: CC 2004 -144.61

DATE ORDER WAS ENTERED: March 15, 2007

PETITION: ☒ Dismissed ☐ Denied ☐ Granted

IF THIS IS AN APPEAL FROM A CONVICTION, COMPLETE THE FOLLOWING:

DATE OF CONVICTION: \_\_\_\_\_

DATE OF SENTENCE: \_\_\_\_\_

## GUILTY OFFENDER STATUS:

Requested: ☐ Yes ☐ NoGranted: ☐ Yes ☐ No

LIST EACH CONVICTION BELOW: (attach additional page if necessary)

- |    |                            |                   |
|----|----------------------------|-------------------|
| 1. | Trial Court Case No. _____ | CONVICTION: _____ |
|    | Sentence: _____            |                   |
| 2. | Trial Court Case No. _____ | CONVICTION: _____ |
|    | Sentence: _____            |                   |
| 3. | Trial Court Case No. _____ | CONVICTION: _____ |
|    | Sentence: _____            |                   |

## POST-JUDGMENT MOTIONS FILED: (complete as appropriate)

Date Filed

Date Denied

Continued by Agreement To (Date)

☐ Motion for New Trial☐ Motion for Judgment of Acquittal☐ Motion to Withdraw Guilty Plea☐ Motion in Arrest of Judgment☐ Other \_\_\_\_\_

COURT REPORTER(S): \_\_\_\_\_

ADDRESS: \_\_\_\_\_

APPELLATE COUNSEL: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

APPELLANT: (IF PRO SE) ..... AIS# 169189

ADDRESS: ..... 1000 St. Clair Road

Springville, Alabama 35146

APPELLEE (IF CITY APPEAL): .....

ADDRESS: .....

I certify that the information provided above is accurate to the best of my knowledge and I have served a copy of this Notice of Appeal on all parties to this action on this 23 day of March, 2007.

*Wilbert M. Gernigan*  
CIRCUIT COURT CLERK

LETTER OF TRANSMITTAL OF NOTICE OF APPEAL TO  
THE COURT OF CRIMINAL APPEALS BY  
TRIAL CLERKDavid Donnie Williams

Appellant

V.

STATE OF ALABAMA

Appellee

Offense Rule 32 PetitionSentence DismissedNotice of Appeal March 21, 2007

Date Filed

Judgement Entry March 15, 2007

Date Entered

[ ] Oral notice of appeal has been given prior to or on the date of entry of the judgment of conviction in this cause,

[ X ] Written notice of appeal has been filed on the date indicated hereon (within 42 days from the entry of judgment or the order overruling a post conviction motion),

A certified copy of the entry of record of the oral notice of appeal or the written notice of appeal is forwarded herewith for filing with the Court of Criminal Appeals.

I certify that I have served a copy of this letter of transmittal along with a copy of the notice of appeal on each of the following:

1. Court Reporter (Name and address) \_\_\_\_\_
2. Defendant \_\_\_\_\_
3. Defendant's appellate counsel. (Name and address) \_\_\_\_\_
4. District Attorney \_\_\_\_\_
5. Attorney General \_\_\_\_\_

DATED this 29th day of March, ~~XX~~ 2007

*Wilbert M. Jernigan*

Circuit Clerk

CERTIFICATE OF COMPLETION AND  
TRANSMITTAL OF RECORD ON APPEAL  
BY TRIAL CLERK

David Donnie Williams

Appellant.

Y.

TO: The Clerk of the Court of  
Criminal Appeals of Alabama

Case No. CC-2004 - 144.61

State of Alabama

Appellee

Date of Notice of Appeal 3-21-07

I certify that I have this date completed and transmitted herewith to the appellate court the record on appeal by assembling in (a single volume of 49 pages) (\_\_\_\_\_XX) the clerk's record and the reporter's transcript and that one copy each of the record on appeal has been served on the defendant and the Attorney General of the State of Alabama for the preparation of briefs.

I certify that a copy of this certificate has this date been served on counsel for each party to the appeal.

DATED this 29th day of March, ~~19~~2007

Wilbert M. Jernigan  
Circuit Clerk

Circuit Clerk

Bullock

County



*Jordan*

106829  
7/26

IN THE COURT OF CRIMINAL APPEALS OF ALABAMA

CRIMINAL APPEALS NO. CR-04-144.60

DAVID DONNIE WILLIAMS  
APPELLANT

VS.

STATE OF ALABAMA  
APPELLEE

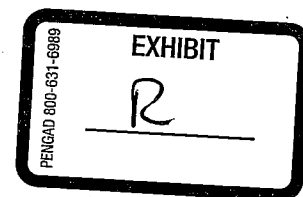
On Appeal From the Circuit Court of Bullock County,  
Alabama.

DENIAL OF RULE 32 PETITION  
APPELLANT BRIEF AND ARGUMENT

Pro se

ORAL ARGUMENT REQUESTED

DAVID DONNIE WILLIAMS  
AIS #169189/P-13-1A  
1000 St. Clair Road  
Springville, AL  
35146-5582



STATEMENT REGARDING ORAL ARGUMENT

The Appellant request appointment of Counsel in order to perform Oral Argument as he is imprisoned at St. Clair Correctional Facility. Oral Argument is essential in order to explain to this Court Appellant's position in regards the subject of the acquittial of Harassment, which was the essential element of Stalking.



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STATEMENT OF THE CASE

Appellant was convicted for the offense of Stalking 13-6-90 Ala. Code 1975, and sentenced to 38 years in the Alabama Department of Corrections.

The Court of Criminal Appeals affirmed Appellant's conviction on December 16, 2005.

On February 7, 2007, Appellant filed his second Rule 32 Petition in the Circuit Court of Bullock County, Alabama.

On March 7, 2007 the State of Alabama filed a Motion to Dismiss Appellant's Rule 32 Petition.

On March 11, 2007 Appellant filed a response opposing Appellee's Motion to Dismiss.

On March 15, 2007, the Trial Court rendered it's order granting and dismissing the Appellant's Rule 32 Petition.

Notice of Appeal was filed on March 21st, 2007, which is the subject of this appeal.

**ISSUES FOR REVIEW**

**ISSUE I.**

**WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN ITS DENIAL OF APPELLANT'S RULE 32 PETITION?**

**ISSUE I.A.**

**WHETHER THE TRIAL WAS WITHOUT JURISDICTION TO RENDER JUDGMENT AND TO IMPOSE SENTENCE?**

STATEMENT OF THE FACTS

On April 21, 2004, Appellant was arrested and charged with two distinct offenses, (Domestic/Violence/Harassment) and (Stalking) pursuant to 13A-6-132, 13A-11-8, and 13A-6-90 Ala. Code 1975.

Appellant was acquitted for the offense of Harassment, but found guilty and sentenced to (38) years in the Alabama Department of Corrections, for the offense of Stalking.

The Court of Criminal Appeals affirmed Appellant's conviction on December 16, 2005.

On February 7, 2007, Appellant filed his Second Rule 32 Petition in the Circuit Court of Bullock County, Alabama.

The Appellant allege as grounds in his second Rule 32 Petition that the Trial Court lacked Subject Matter Jurisdiction to accept a verdict of guilty or to impose a sentence for the offense of stalking, once the jury rendered a verdict of not guilty for the offense of Harassment.

The Appellant argues in his Rule 32 Petition that the State of Alabama failed to prove the essential element of Harassment in order to sustain a conviction for stalking, once the jury found Appellant not guilty of Harassment.

The Appellant alleges that the offense of Harassment in said cause, made up the *Res Gestae* of both offenses ( Stalking and Harassment ) and based on the victim Ms. Callie Williams testimony, both offenses were inseparably connected with the essential element of Harassment to secure a conviction for stalking, which testimony was as follows:

On the evening of March 19, 2004, according to Callie Williams the victim, the Appellant came to her daughter's house approximately five or six times.

Callie Williams and Appellant's next encounter occurred at Wayne Farm, on March 24, 2004, where they both were employed.

The next encounter was on March 26, 2004, at Callie Williams daughter's house.

On March 27, 2004, Ms. Williams and Appellant had two more encounters during the course of that day.

On March 30, Ms. Williams had an encounter with Appellant , which led the victim to file an incident report against Appellant for Harassment with the Union Springs Police Department.

The last encounter between Ms. Williams and Appellant occurred at the A-G Grocery Store, in which, Ms. Williams filed another incident report against Appellant for stalking with the Union Springs Police Department.

On April 21st, 2004, the Appellant was arrested and charged with the offenses,, Domestic Violence/Harassment and Stalking.

On October 19, 2004, the State brought before the Grand Jury the charges: Domestic/Violence/Harassment Third Degree 13A-6-132 and Stalking 13A-6-90.

The indictment of Domestic Violence Third Degree/Harassment alleged that " David Donnie Williams " who's name is otherwise unknown to the Grand Jury, did on or about March 30, 2004, commit the crime of Harassment(section 13A-11-8 of the ALA.CODE 1975 ), with intent to harass, annoy, or alarm another person. to wit Callie Williams, did direct a threat, verbal or nonverbal, to wit:

Grabbed her by her clothes and verbally threatened her, with the intent to carry out the threat, toward another person, to wit: Callie Williams, a reasonable person and target of the threat, causing her to fear for her safety, with the victim being a former spouse, parent, child, a person with whom he/she has had a dating relationship, in violation of § 13A-6-132 Ala. Code 1975.

However, such indictment fails to obtain the date it was adjudged as a true bill by the Foreman of the Grand Jury, nor is such indictment signed by the presiding Judge and Circuit Clerk.

The indictment for stalking that "The Grand Jury of said County charge that, before the finding of this indictment, David Donnie Williams, whose name is otherwise unknown to the Grand Jury, did on or about between March 24, 2004, until April 17, 2004, intentionally and repeatedly follow or harass Callie Williams and did make a credible threat with the intent to place Callie Williams in reasonable fear of death or serious bodily harm, in violation of § 13A-6-90 of Ala. Code 1975, such indictment was signed and dated for October 19, 2004, by Grand Jury Foreman Leon Battle, Circuit Clerk Wilbert M. Jernigan and presiding Judge L. BERNARD SMITHART.

STANDARD OF REVIEW

The Standard of Review on appeal in a Postconviction Proceeding is whether the Trial Judge abused his discretion when he denied the Petition.

STRICKLAND V. STATE, 771 So.2d 1123. (AL CRIM. HPP. 2000 )



SUMMARY OF THE ARGUMENT

The trial court erred in dismissing Appellant's Rule 32 petition stating that Appellant's claims lack merit.

Appellant who was indicted on two charges, one stalking (13A-6-90) the other Harassment (13A-11-8) in which jury returned a verdict of not guilty for the offense of Harassment, but a guilty verdict for stalking.

Appellant presents facts in his argument that the evidence used to indict Appellant of stalking is the evidence used to indict Appellant of Harassment, which are two distinct offenses, but are part of one continuously criminal activity. The defense offered the same evidence to the jury, and the jury found Appellant not guilty of Harassment, but guilty of Stalking.

Appellant contend that infinding a conviction for stalking the defense must prove every element of the charge, which Harassment is an essential underlying element.

Appellant's argument provides that since the jury's verdict of not guilty for the offense of Harassment it consequently acquitted Appellant of Stalking. This causing trial court to lack subject matter jurisdiction to accept juries guilty verdict for Stalking, and the Double Jeopardy Clause protects Appellant from being retried after the acquittal of Harassment.

The State of Alabama showed no refutal evidence of Appellant's claim which could entitle Appellant relief.

Appellant's argument concludes that his claim is with merit and the trial court erred in not granting Appellant an evidentiary hearing. This matter should be reversed and remanded.

WHETHER THE TRIAL COURT ABUSED IT'S DISCRETION WHEN DENYING APPELLANT'S RULE 32 PETITION CLAIM THAT THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO ACCEPT A VERDICT OF GUILTY FOR THE OFFENSE OF STALKING, ONCE THE JURY RENDERED A VERDICT OF NOT GUILTY OF THE OFFENSE OF HARASSMENT.

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ARGUMENT

Appellant argues that the trial court erred in dismissing Appellant's Rule 32 petition on the grounds that Appellant's claims are without merit.

Appellant was indicted on two distinct offenses, [Stalking 13A-6-90] and [Domestic Violence / Harassment 13A-6-132 and 13A-11-8].

The Jury returned a verdict of not guilty for the offense of harassment but found Appellant guilty of the offense of Stalking 13A-6-90. (See Record of Appeal R-26)

Appellant argues that the trial court Lacked Subject Matter Jurisdiction to accept a guilty verdict or to impose a sentence for the offense of Stalking once the Jury rendered a verdict of not guilty for the offence of Harassment.

Appellant avers that the offense of Harassment was interwoven and part of the Res Gestae of one continuously criminal offense of Harassment and that the evidence presented to the Jury that acquitted Appellant of Harassment, was also the same evidence used to convict Appellant of the offense Stalking.

The Black Law Dictionary 7th Edition defines "Res Gestae" as follows:

Res Gestae: [Latin things done] " The events at issue, or other events contemporaneous with them".  
See also: Harrison V. Baker 260 Ala. 488, 493, 71 So. 2d 284.

The Appellant argues on appeal that the trial court was without Subject Matter Jurisdiction to accept the verdict of "Stalking" in his case, due to the finding of not guilty to the charge of Domestic Violence / Harassment by the jury. Appellant further argues that the evidence admitted of the additional charge in the indictment, "Stalking" made up the " Res Gestae " of both offense " Harassment" and were relevant to prove Williams guilty or not of both offenses.

The events from March 19th, 2004 to April 17th, 2004 alleged to have been committed by Williams are the underlying elements of both Domestic Violence / Harassment and Stalking, which was Williams acts of Harassment.

Williams acts of harassment were admissible evidence necessary to indict him and necessary evidence to convict him. As the harassment evidence from March 19th, 2004, to April 17th, 2004, were admissible because they were inseparably connected with the essential element of harassment to secure a conviction of stalking or domestic violence. SMOOT V. STATE, 381 So. 2d 668, 671 (Ala. Crim. App. 1980)

This was the basis of the State Of Alabama evidence during Appellant trial and the method it was presented to the jury to settle the disputed issue. State witness Callie Williams testify's as follows as to the events of harassment that formed the essential element of each charge:

At R-27, Ms. Williams testifies that on March 24th, 2004, Appellant came to daughter's house approximately five or six times.

Ms. Callie then testified that on March 19th, 2004, after leaving the clerk's office where she obtain a criminal trespass warrant against Appellant, She arrived at her job, where she and Appellant were both employed. Ms. Callie testified that, Appellant approached her and made threats against her on two

different occasions, then later arrived at her daughter's resident but she refused to open the door for Appellant. [R-24-35]

On March 26th, 2004, Appellant returned to Ms. Callie Williams daughter's house and that she still refused to open the door for Appellant. [R-36]

The next incident occurred on March 27th, 2004, where Ms. Williams testified that upon arrival at her house, she found Appellant inside her home asleep, and that she called the police, and when they arrived Appellant was escorted out by a Union Springs police officer. [R-27-39]

Ms. Williams stated that later on that night while out to eat at the restaurant known as "Smokey O's", appellant entered the restaurant and began threatening and directing verbal abuse towards her. [R-39-40]

On March 30th, 2004, Ms. Williams testified that upon arrival at the bus stop to pick up her eight year old daughter and finding that she wasn't there, later discovered that appellant had her daughter and when she confronted him, appellant became abusive while pulling on her sweatshirt and threaten her, Immediately after the incident with appellant, she went to the Union Springs Police Department and filed charges for Harassment. [R-42-46]

Ms. Williams testified that the last encounter between her and Appellant occurred on April 17th, 2004, at the A- G Grocery store, which incident led Ms. Williams to call the Police and filing another incident report for the offense Stalking.

The State Of Alabama failed to prove the essential element of harassment in order to sustain a conviction for stalking, once the jury rendered, a verdict of not guilty for the offense of harassment, and it effectively acquitted appellant of the offense of stalking. BRADLEY V. STATE, 925 So. 2d 237, 2005 Ala.

Lexis 166 held:

"The jury verdict at the end of Bradley's trial represented more than an implicit acquittal of the charge of Robbery in the first degree; under the instructions by which the jury was bound, it's verdict included an explicit acquittal with respect to the offense of Robbery in the first degree. The jury was instructed that only if it found that the State had failed to prove all of the elements of Robbery in the first degree, that the jury could not find Bradley guilty of that offense, should it that event" move to consideration of the lesser included offense of assault in the second degree.

The law is well settled that this court will presume that the jury followed the trial courts instructions unless there is evidence to the contrary. " Wooten V. Ivey, 877 So. 2d 585, 590 (Ala. 2003). The verdict form, which listed in descending order the available verdict options by which Bradley could be found guilty of Robbery in the first degree, Assault in the second degree, or Assault in the third degree or be found simply not guilty, conformed to the jury instructions, so that the verdict form contained no option that stated that Bradley was not guilty of Robbery in the first degree. The verdict of not guilty of first degree Robbery was an explicit condition precedent, under the trial court instructions, to the jury proceeding to consider the offenses of Assault in the second degree and Assault in the third degree. Accordingly, proceeding under those instructions and using the conforming verdict form, the jury clearly declared by its verdict that it had found Bradley not guilty of the offense of Robbery in the first degree".

Appellant avers that the trial court lacked Subject Matter Jurisdiction to accept a guilty verdict on the offense of Stalking or to impose a sentence, and that the Double Jeopardy Clause protected appellant from ever being retried

for the offense of stalking once acquitted for the offense of harassment

BRADLEY V. STATE, SUPRA held:

"We affirm the decision of the court of criminal appeals that ' the jury's verdict finding Bradley guilty of second degree assault effectively acquitted Bradley of first degree robbery as charged in the indictment; "thus Bradley cannot be retried for robbery in the first degree"

The State of Alabama presented no contrary evidence to refute Appellant's claim; which if proven true would entitle Appellant to relief. See EX PARTE BOATWRIGHT 471 So. 2d 1257.

The trial court abused its discretion in denying Appellant's Rule 32 petition on the grounds that William's claim is without merit and this cause is due to be Reversed and Remanded back to the Circuit Court for an Evidentiary Hearing to determine the facts in this matter with appointment of counsel (STRICKLAND V. STATE, 771 So. 2d 1123).

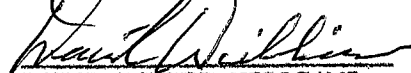
CONCLUSION

Wherefore, Appellant respectfully requests that this Honorable Court reverse the decision of the Trial Court and remand this cause back for an Evidentiary Hearing with appointment of counsel.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this brief to all parties on this 5<sup>th</sup> day of July 2007, by placing in the United States Mail postage pre-paid as follows: Attorney General Troy King, 11 South Union Street, Montgomery, AL 36130.

RESPECTFULLY SUBMITTED,



DAVID DONNIE WILLIAMS

AIS# 169189 P-13-1A

1000 ST. CLAIR RD.

SPRINGVILLE, AL 35146



CR-06-1048

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*In the COURT of CRIMINAL APPEALS  
of ALABAMA*

---

DAVID DONNIE WILLIAMS,  
Appellant,

v.

STATE OF ALABAMA,  
Appellee.

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*On Appeal From the Circuit Court  
of Bullock County  
(CC-2004-144.61)*

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**BRIEF OF APPELLEE**

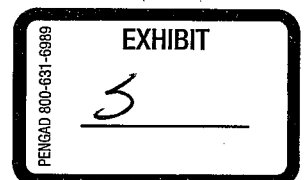
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July 27, 2007



**STATEMENT REGARDING ORAL ARGUMENT**

Oral argument in this case is not necessary because the record and briefs in this case adequately set forth the facts and law. Ala. R. App. P. 34.

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**STATEMENT OF THE CASE AND FACTS**

This is an appeal from the dismissal of a Rule 32 postconviction petition in the Circuit Court of Bullock County, Alabama (CC-2004-144.61).

David Donnie Williams, the appellant in this case, "repeatedly followed, harassed, and expressly threatened Callie Williams with the intent to place her in reasonable fear of death or serious bodily injury."<sup>1</sup> See Williams v. State, CR-04-0846 (Ala. Crim. App. Dec. 16, 2005). He was subsequently convicted of stalking.

Williams filed this Rule 32 postconviction petition, his second, in the Bullock County District Court on February 7, 2007, (C. 9), challenging his conviction and resulting sentence of thirty-eight years' imprisonment.

(C. 2) He raised the following claims in his petition:

1. "Conviction obtained by a violation of the protection against double jeopardy" (C. 6);
2. "The court was without jurisdiction to render judgment or impose the sentence" (C. 6) because he was convicted in violation of the double jeopardy clause (C. 13); and,

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<sup>1</sup>This Court may take judicial notice of its own records. See Ex parte Salter, 520 So. 2d 213, 216 (Ala. Crim. App. 1987).

3. "The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law" (C. 6).

On March 7, 2007, the State filed a motion to dismiss arguing that Williams's claim that his conviction was against double jeopardy principles was without merit because he was convicted of only one offense - stalking.

(C. 24) The State also argued that he had raised the same issue in a previous petition. (C. 24) Finally, the State argued that Williams failed to state a claim upon which relief could be granted and that there were no material issue of facts or law existing that entitled Williams to relief. (C. 24)

On March 15, 2007, the Circuit Court L. Bernard Smithart issued a written order dismissing Williams's petition. (C. 35) Judge Smithart found that Williams's double jeopardy claim was "without merit and d[id] not accurately reflect the circumstances of [his] [c]onviction." (C. 35) Judge Smithart also found that Williams had "failed to meet his burden of proof as provided by Rule 32.2" regarding his claims that the trial court was without jurisdiction and that his sentence was not authorized by law. (C. 35) Judge Bernard held that

Williams's petition was precluded, time-barred, and successive. (C. 35) Williams filed a notice of appeal on March 23, 2007. (C. 1, 42)

**ISSUE PRESENTED FOR REVIEW**

Did the trial court properly deny Williams's petition?

**STANDARD OF REVIEW**

The standard of review in evaluating the denial of a postconviction petition is whether the trial court abused its discretion. See Elliot v. State, 601 So. 2d 1118, 1119 (Ala. Crim. App. 1992). This Court will affirm the trial court's decision to deny a postconviction petition if the trial court was correct for any reason. See Bearden v. State, 825 So. 2d 868, 870 (Ala. Crim. App. 2001).



### SUMMARY OF THE ARGUMENT

The trial court did not abuse its discretion when it summarily denied Williams's petition arguing that his conviction was in violation of the Double Jeopardy Clause. Essentially, he claims that he could not be convicted of stalking because the jury acquitted of the lesser included offense of harassment. This claim is precluded under Rule 32.2(a)(4) because it was raised in a previous Rule 32 petition wherein this Court found the harassment charge was not a lesser included offense of the stalking charge. Additionally, Williams filed his petition six days outside the one year limitation period and therefore is time-barred. Finally, this is Williams's second petition, raising the same substantive issue, and thus is deemed successive.

**ARGUMENT**

Williams contends that the trial court abused its discretion by dismissing his petition as procedurally barred and without merit. Williams essentially argues that, because he was acquitted of the lesser included offense of harassment, his conviction for stalking was in violation of the Double Jeopardy Clause.<sup>2</sup> (Williams's petition, p. 8.) Because Williams's claim is without merit, precluded, time-barred, and successive the trial court did not abuse its discretion by summarily dismissing his petition.

The trial court may summarily dismiss a Rule 32 postconviction petition when it determines that "the petition is not sufficiently specific, or is precluded, or fails to state a claim, or that no material issue of fact or law exists which would entitle the petitioner to

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<sup>2</sup>To the extent Williams challenges the sufficiency of the evidence used to convict him of stalking, this issue is raised for the first time on appeal, and thus, not properly before this Court for appellate review. See Boyd v. State, 913 So. 2d 1113, 1143-44 (Ala. Crim. App. 2003). Moreover, his assertion that the victim's testimony was not enough to support his conviction is without merit. The testimony of the victim by itself is sufficient to establish a prima facie case of stalking. See Bartlett v. State, 701 So. 2d 305, 308 (Ala. Crim. App. 1997).

relief." Ala. R. Crim. P. 32.7(d). See also Murph v. State, 853 So. 2d 291, 292 (Ala. Crim. App. 2002). A petitioner is entitled to an evidentiary hearing only after he has pleaded a full factual basis which, if true, entitles him to relief. See Sullivan v. State, 944 So. 2d 164, 166 (Ala. Crim. App. 2006); Madison v. State, CR-05-0052, 2006 WL 2788983, at \*5 (Ala. Crim. App. Sept. 29, 2006). The trial court's decision to dismiss the petition will be upheld if this Court determines that it correctly dismissed the petition for any reason. See Bearden v. State, 825 So. 2d 868, 870 (Ala. Crim. App. 2001).

A petitioner is not entitled to postconviction relief for any claim that he has "raised ... in any previous collateral proceeding ... whether or not the previous collateral proceeding was adjudicated on the merits of the ground[] raised." Ala. R. Crim. P. 32.2(a)(4). On March 28, 2006, Williams filed a Rule 32 petition challenging his conviction on the ground that the trial court was without jurisdiction because he was acquitted of the lesser included offense of harassment. See Williams v. State, CR-05-1451 (Ala. Crim. App. Aug. 18, 2006). This Court held:

A charged offense is considered a lesser included offense if 'it is established by proof of the same

or fewer than all the facts required to establish the commission of the offense charged.' [] The indictment charging Williams with stalking states that the charge is premised on actions taken by Williams between March 24 and April 17, 2004. [] The indictment charging Williams with domestic violence, however, states that the charge is premised on an incident on March 30, 2004, in which Williams grabbed Callie Williams by her clothes and verbally threatened her. [] Thus, separate evidence had to be presented regarding each charge. As such, domestic violence cannot be considered a lesser included offense encompassed in the stalking charge.

Id. at 4. Because the claim of whether Williams's harassment charge was a lesser included offense of the stalking charge has been raised in a previous petition, Williams's petition is precluded. Moreover, this Court has found Williams's claim without merit.

Additionally, the trial court "'shall not entertain any petition for relief from a conviction or sentence' that is not timely." Ex parte Ward, No. 1051818, 2007 WL 1576054, at \*8 (Ala. Jun. 1, 2007) (holding that, though Rule 32.2(c) is not a jurisdictional bar, its application is mandatory). A petition raising nonjurisdictional claims must be filed a "year after the issuance of the certificate of judgment" by this Court. Ala. R. Crim. P. 32.2(c). The certificate of judgment was issued in Williams's case on February 1, 2006. See Williams v. State, CR-04-0846 (Ala.

Crim. App. Dec. 16, 2005). Because his petition was filed outside the limitation period - on February 7, 2007 - and raised a meritless claim, the trial court properly dismissed Williams's petition.

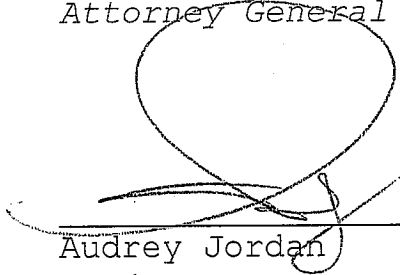
Furthermore, Rule 32.2(b) prohibits petitioners from filing successive petitions raising the same claims. Ala. R. Crim. P. 32.2(b). Williams concedes that he filed a previous petition under Rule 32. (Williams's petition, p. 3.) It is clear that the substantive issue raised in his present petition is the same raised in his previous petition. Consequently, Williams's petition is deemed successive. Therefore, the trial court did not abuse its discretion by dismissing his petition.

**CONCLUSION**

The trial court correctly denied Williams's petition; therefore, there was no abuse of discretion. Because Williams has shown no abuse of discretion, the trial court's decision must be affirmed.

Respectfully submitted,

Troy King  
Attorney General



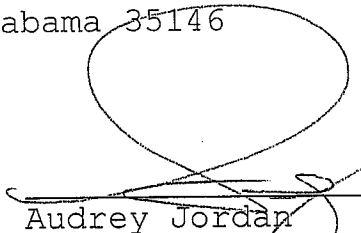
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Audrey Jordan  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of July, 2007, I did serve a copy of the foregoing on Williams by placing same in the United States Mail, first class, postage prepaid and addressed as follows:

David Donnie Williams  
AIS # 169189  
St. Clair Correctional Facility  
1000 St. Clair Road  
Springville, Alabama 35146

  
\_\_\_\_\_  
Audrey Jordan  
Assistant Attorney General

ADDRESS OF COUNSEL:  
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Criminal Appeals Division  
11 South Union Street  
Montgomery, Alabama 36130-0152  
(334) 242-7300

298667/106829

**FORM FOR USE IN APPLICATIONS**  
**FOR HABEAS CORPUS UNDER 28 U.S.C. § 2254** **RECEIVED**

David Donnie Williams 2007 JUL 13 A 9:30

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Name

# 169189 CEBRA P. HACKETT, CL.  
U.S. DISTRICT COURT  
MIDDLE DISTRICT ALA

---

Prison Number

St. Clair Correctional Facility - 1000 St. Clair Road,

---

Springville, Alabama 35146

---

Place of Confinement

United States District Court Middle District of Alabama

Case No. 2:07 cv 642 - WHA

(To be supplied by Clerk of U. S. District Court)

David Donnie Williams, PETITIONER  
(Full Name) (Include name under which you were convicted)

Ralph Hooks, RESPONDENT  
(Name of Warden, Superintendent, Jailor, or authorized person  
having custody of Petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF Alabama

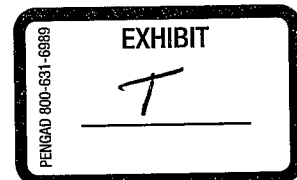
Troy King, ADDITIONAL RESPONDENT.

(if petitioner is attacking a judgement which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN  
STATE CUSTODY

INSTRUCTIONS--READ CAREFULLY

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.





The Judicial Conference of the United States has adopted, effective 1/1/83, the 8½ x 11 inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings, etc. filed after 12/31/82 must be on 8½ x 11 inch paper, otherwise we cannot accept them.

- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies \* must be mailed to the Clerk of the United States District Court whose address is:

P.O. Box 711  
Montgomery, Alabama 36101

- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

**\*If you are proceeding in forma pauperis, only the original petition needs to be filed with the Court.**

#### PETITION

1. Name and location of court which entered the judgment of conviction under attack Circuit Court of Bullock County
2. Date of judgment of conviction \_\_\_\_\_
3. Length of sentence 38 years Sentencing Judge \_\_\_\_\_

4. Nature of offense or offenses for which you were convicted: Stalking and  
Domestic Violence

5. What was your plea? (check one)

(a) Not guilty ( ☒ )

(b) Guilty ( )

(c) Nolo contendere ( )

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: \_\_\_\_\_

6. Kind of trial: (Check one)

(a) Jury ( ☒ )

(b) Judge only ( )

7. Did you testify at the trial? Yes ( ) No ( ☒ )

8. Did you appeal from the judgment of conviction? Yes ( ☒ ) No ( )

9. If you did appeal, answer the following:

(a) Name of court Alabama Court of Criminal Appeals

(b) Result Affirmed

(c) Date of result \_\_\_\_\_

If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details: Appellate Counsel Abandon direct appeal and didn't

file Certiorari in the Supreme Court of Alabama.

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes ( ☒ ) No ( )

11. If your answer to 10 was "yes", give the following information:

(a) (1) Name of court Circuit Court of Bullock County, AL

(2) Nature of proceeding Rule 32 petition

(3) Grounds raised Denial of effective Assistance of trial and  
appellate counsel.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( ☒ )

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court Circuit Court of Bullock County, AL

(2) Nature of proceeding Rule 32 petition

(3) Grounds raised The trial court was without jurisdiction to accept verdict as the jury returned a verdict of not guilty to Harassment, The essential element of the charge of Stalking.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( ☒ )

(5) Result Denied

(6) Date of result \_\_\_\_\_

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court None

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes ( ) No ( )

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:

(1) First petition, etc. Yes ( ) No ( )

(2) Second petition, etc. Yes ( ) No ( )

(3) Third petition, etc. Yes ( ) No ( )

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: Inapplicable, I appealed

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- ☒ (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.
- (k) Denial of effective assistance of appellate counsel.

A. Ground one: See Attached Pages

Supporting FACTS (tell your story briefly without citing cases or law):

See Attached Pages

B. Ground two: See Attached Pages

Supporting FACTS (tell your story briefly without citing cases or law):

See Attached Pages

C. Ground three: See Attached Pages

Supporting FACTS (tell your story briefly without citing cases or law):

See Attached Pages

D. Ground four: See Attached Pages

Supporting FACTS (tell your story briefly without citing cases or law):  
See Attached Pages

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal state briefly what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

14. Do you have any petition or appeal now pending in any court, wither state or federal, as to the judgment under attack? Yes ( ) No ( )

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Kenneth Asbon

(b) At arraignment and plea SAME

(c) At trial SAME

(d) At sentencing SAME

(e) On appeal \_\_\_\_\_

(f) In any post-conviction proceeding NONE

(g) On appeal from any adverse ruling in a post-conviction proceeding: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ( ☒ ) No ( ☐ )

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ( ☐ ) No ( ☒ )

(a) If so, give name and location of court which imposed sentence to be served in the future: N/A

(b) And give date and length of sentence to be served in the future: NONE

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ( ☐ ) No ( ☒ )

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on 7-2-07  
(date)

  
Signature of Petitioner



ISSUE I.

WHETHER THE EVIDENCE ADDUCED AT TRIAL WAS SUFFICIENT TO SUSTAIN  
A CONVICTION ON THE CHARGE OF "STALKING" IN VIOLATION OF  
SECTION 13A-6-90.

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In summary, the testimony of the witnesses for the State did not prove the State's case beyond a reasonable doubt. Starting with Ms. Baker, the Security Guard, she could not testify that she had ever seen Williams stalk Callie Williams. Also, Johnny Taylor stated that he had lied before to the Pardon and Parole Board on Williams behalf. However, Taylor has been convicted of crimes of moral turpitude and as such he has no credibility. Furthermore, Taylor offered no evidence of stalking on the part of Williams.

Mr. Jernigan was called by the State and did not offer any testimony or evidence of stalking on the part of Williams. The younger children of Callie Williams, Quadarius (14) and Narkeisha (8), both offered testimony that was favorable to Williams' defense. Narkeisha stated that she had heard her mother and Williams cursing each other during quarrels and Quadarius testified that his mother and the prosecutor had helped him memorize his testimony so that they could get David Donnie Williams and send him to prison and that they needed his help to do so. (Emphasis added)

Anthony Blakeley testified that he was in the car with Williams at the time the alleged stalking took place and that at no time did he ever hear any type of threat made by Williams. Additionally, Lt. Freeman testified that his only involvement was that of a high speed chase with Williams concerning traffic violations; that he never observed any stalking by Williams.



In fact, the only witness, other than Callie Williams herself, who gave any type of testimony favorable to the state was Lakeisha Williams, who is the adult (21-year old) daughter of Callie Williams, and her testimony closely mirrored that of her mother.

As such, the only conclusion that can be derived from these facts is that a reasonable jury could not have convicted Williams based on such insufficient evidence as was presented at trial. Therefore, because the wrong standard of review was held, the jury's decision failed to uphold the correct standard of review as stated in JACKSON V. VIRGINIA, 443 US 307, 61 L. Ed.2d 560, 99 S Ct. 2781.

"...As the evidence to support a state criminal conviction must be proof of guilt beyond reasonable doubt as determined by rational trier of fact."

ISSUE II.

PETITIONER'S TRIAL COUNSEL WAS INEFFECTIVE DURING TRIAL DUE TO HIS FAILURE TO OBJECT TO THE TRIAL JUDGE'S INSTRUCTIONS TO THE JURY TO CONTINUE DELIBERATION.

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The jury's written note to the judge was that they were split on the Domestic Violence charge. It was error for the trial court to react to the jury's communication that it could not reach unanimous verdict.

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ISSUE III.

PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL DUE TO HIS FAILURE TO RAISE ON DIRECT APPEAL THAT TRIAL COUNSEL WAS INEFFECTIVE DUE TO HIS FAILURE TO OBJECT TO THE TRIAL JUDGE'S INSTRUCTION TO THE JURY TO CONTINUE DELIBERATION.

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The Fourteenth Amendment of the United States Constitution provides Petitioner with a fundamental right to a unanimous jury verdict on whether the criminal act charged has been committed. It was error for the trial court to react to the jury's communication that it could not reach unanimous verdict.

ISSUE IV.

PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL DUE TO HIS FAILURE TO RAISE ON DIRECT APPEAL THAT THE CIRCUIT COURT HAS BEEN WITHOUT JURISDICTION TO ADJUDICATE HIS GUILT OF STANDING BECAUSE HE WAS ACQUITTED OF THE LESSER-INCLUDED OFFENSE OF HARASSMENT.

Petitioner contends that, because the offense of Harassment is a lesser-included of the greater offense of Stalking, his Stalking conviction was void because the same facts that were supposedly used to prosecute him for the underlying misdemeanor for Harassing his ex-wife or Trespassing upon her premises were subsequently used to establish an element of the Stalking charge, i.e., that the accused had "intentionally and repeatedly followed or harassed" the victim, that the accused made a "credible threat," and that the accused "intended" to place the victim in reasonable fear of death or serious bodily injury.

ISSUE V.

THE PETITIONER ALLEGES THAT THE CIRCUIT COURT WAS WITHOUT JURISDICTION TO ADJUDICATE HIS GUILT OF THE GRATER OFFENSE OF STALKING BECAUSE HE WAS ACQUITTED OF THE MISDEMEANOR LESSER-INCLUDED OFFENSE OF HARASSMENT.

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The Appellant argues on appeal that the trial court was without subject matter jurisdiction to accept the verdict of "Stalking" in his case due to the finding of not guilty to the charge of "Domestic Violence/Harassment" by the jury. Appellant further argues that the evidence admitted of the additional charge in the indictment, "Stalking," made up the "Res gestae" of both offenses "Harassment" and were relevant to prove Williams guilty of not guilty of both offenses.